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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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
	)	

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## EXECUTIVE SUMMARY

Today, ILECs stand in an economically untenable position: three-quarters of consumers have abandoned legacy ILEC services for wireless and IP-based offerings. To compete, ILECs must upgrade their facilities to meet the demands of this converged multi-provider marketplace; yet outdated rules require them to maintain abandoned facilities and increasingly obsolete services, diverting precious capital away from next-generation networks. The transition to IP-based services is well underway on the wholesale side as well. Copper-based DS1 and DS3 links provided largely by ILECs have given way to higher capacity Ethernet services offered by ILECs, traditional CLECs and cable providers, none of which providers dominates the market.

In the face of these stark realities, the *NPRM* proposes overly restrictive, ILEC-specific copper retirement and discontinuance requirements that would hobble the ongoing industry-wide transition to IP-based services provided over fiber networks to consumer and business customers alike. The *NPRM* also explores rules that would impose on service providers the burden of providing backup power when such equipment could be better provided by others.

Mandates requiring ILECs to maintain unwanted, redundant networks divert capital from the upgrades necessary for the IP transition. To avoid unduly hindering the transition to more modern networks and facilities, to the benefit of all consumers, the Commission should only tweak, rather than overhaul, the copper retirement rules and the discontinuance process under Section 214(a) of the Act. Similarly, in a multi-provider market with numerous device manufacturers, there is no reason to require service providers to supply backup electric power for CPE.

***Section 214 Discontinuance Rules.*** The Commission should avoid imposing new, asymmetric Section 214(a) discontinuance obligations on ILECs. Exit-approval requirements are appropriate only when retail customers will be left without any reasonably comparable alternative following the removal of a service offering. More stringent discontinuance obligations would be especially inappropriate in the context of the IP transition because Section 214(a) does not apply to the replacement of one offering by another. As legacy services reach the natural end of their life cycles, they are being replaced by higher capacity Ethernet and other IP-based services offered by CLECs, cable operators and others, and this customer-driven transition makes coerced continuation of the legacy services impractical and harmful to consumers' interests.

Given the wealth of available competitive alternatives, the Commission should not hamper the IP transition by requiring, for the first time, approval under Section 214(a) for the replacement of one technology for another or the elimination of a wholesale offering absent any effect on retail customers. In fact, the need to eliminate an inefficient, redundant service has been held repeatedly to be a significant factor justifying discontinuance. A requirement that an ILEC offer equivalent wholesale access whenever it discontinues a wholesale input by other carriers would violate decades of precedent holding that only the effect on end users is relevant to Section 214(a) discontinuance.

Instead, the Commission should adopt a presumption that discontinuance of TDM voice service is permitted where there exists a reasonably comparable retail interconnected VoIP,

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circuit-switched cable, 3G wireless, or TDM voice service alternative. That reasonable alternatives might be more administratively burdensome or costly than the discontinued service or result in some customer dislocation does not weigh heavily against discontinuance under Section 214(a). Moreover, the Commission should reject efforts to require, contrary to precedent, the provision of a replacement service matching all of the characteristics of a discontinued legacy wireline service. The Commission also should not change its interpretation of Section 214(a) by requiring Commission approval for the elimination of a discount plan or pricing structure.

***Copper Retirement Rules.*** There is also no demonstrated need for significant changes to the Commission’s copper retirement rules. CenturyLink already voluntarily fulfills most of the requirements proposed in the *NPRM* regarding disclosure to interconnecting CLECs and retail customers. The Commission has adequate network modification and copper retirement notification rules, and the disclosure process is working well. CenturyLink provides advance notice of any material change affecting copper loops, even where those facilities are not being retired.

Overly burdensome network modification rules could interfere with and delay the transition of CenturyLink’s network to gigabit broadband service, forcing it to forego some fiber deployments that might otherwise occur. The proposed rules also threaten to impose a Commission approval requirement on what has until now been a notification process. The Commission’s proposal to extend copper retirement rules to retail customers is not consistent with Section 251(c)(5), which requires notice only to interconnecting carriers, and is unnecessary and superfluous for retail customers in the case of copper overbuilt with fiber.

CenturyLink is especially concerned about the proposed restrictions on “upselling” new and enhanced services. The Commission already has sufficient rules to address concerns of misleading marketing techniques. And ILECs should not be singled out for additional requirements effectively preventing them from marketing new offerings to customers after retiring copper loops. Given the absence of any documented justification for such forced speech, this proposal also would violate the First Amendment and discourage consumers from obtaining the benefits of superior service, thereby undermining the business case for fiber overbuild.

***Backup Power Rules.*** Finally, rather than requiring service providers to supply backup power for the CPE that connects to their IP networks, the Commission should endorse the Communications Security, Reliability and Interoperability Council (“CSRIC”) best practices recommendations. The Commission has decoupled the provision of CPE and services for decades, resulting in a wealth of alternative equipment sources for consumers. CSRIC has recommended that voice service providers educate consumers on the need for backup power for their services, provide information about how to secure backup power, and make affordable battery backup power options available. Service providers are already implementing those recommendations, and the Commission should embrace them, rather than formulating new regulations. Self-regulation is preferable to new mandates especially because IP service providers are not in the separate business of providing CPE.

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**COMMENTS OF CENTURYLINK<sup>1</sup>**

**I. INTRODUCTION**

The communications landscape is being completely remade by twin forces: the ongoing transition from legacy copper-based telephone networks to an all-purpose fiber network carrying Internet Protocol (“IP”) services, and the simultaneous migration by consumers away from legacy ILEC services toward mobile and IP-based offerings offered by a wide array of providers. These two sea changes are placing ILECs in a uniquely difficult position *vis-à-vis* their competitors: They must upgrade to far more efficient and robust fiber-optic facilities if they are to compete effectively in the converged, multi-provider marketplace, but they alone bear the high costs of maintaining existing legacy networks. Still more problematic, some advocate that ILECs and ILECs alone must be required to leave those legacy networks in place to ensure the continued availability of service characteristics that customers have shown they do not value. If

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<sup>1</sup> These comments are filed by, and on behalf of, CenturyLink, Inc. and its subsidiaries.

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these advocates have their way, ILECs will be left in an untenable position, forced to devote finite capital to maintaining and operating existing plant rather than using it to expand and enhance next-generation networks.

While the *NPRM* focuses on the ongoing shift to new technologies, and the alleged risks that this transition poses for ILEC customers, it unduly downplays the extent to which customers have *voluntarily* abandoned legacy ILEC offerings, and the effect this has had on basic network economics. On the retail side, the Commission acknowledges that approximately three-quarters of customers have switched from ILEC wireline networks to wireless or interconnected VoIP for their voice services.<sup>2</sup> Indeed, as of June 2013, ILEC traditional switched lines had fallen to 70.5 million, or only 40 percent of lines served at the end of 2000,<sup>3</sup> and interconnected VoIP accounted for 47 percent of residential fixed voice connections.<sup>4</sup> Many of these VoIP lines are provisioned by cable operators. Indeed, Comcast is now the third largest provider of residential voice services in the country.<sup>5</sup>

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<sup>2</sup> *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications*, Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968, 14974-75 ¶ 9 (2014) (“*NPRM*”).

<sup>3</sup> *Compare* Industry Analysis and Technology Div., FCC, *Local Telephone Competition: Status as of June 30, 2009* at 12, Table 1 (Sept. 2010), available at <https://prodnet.www.neca.org/publicationsdocs/wwpdf/9310fccreport.pdf>, with Industry Analysis and Technology Div., FCC, *Local Telephone Competition: Status as of June 30, 2013* at 5, Figure 4 (June 2014) (“*Mid-2013 Local Telephone Competition Report*”), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-327830A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-327830A1.pdf).

<sup>4</sup> *Mid-2013 Local Telephone Competition Report* at 5, Figure 4.

<sup>5</sup> News Release, Comcast, *Comcast Now the Third Largest Residential Phone Services Provider in the U.S.* (Mar. 11, 2009), available at <http://corporate.comcast.com/news-information/news-feed/comcast-now-the-third-largest-residential-phone-services-provider-in-the-us>.

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Further, 41% of households have “cut the cord,” relying exclusively on wireless service.<sup>6</sup> There were nearly 306 million wireless voice connections in the U.S. as of mid-2013, more than double the number of in-service access wirelines as of mid-2013.<sup>7</sup> As a proportion of the total voice market – comprised of end-user switched access lines, interconnected VoIP subscriptions, and mobile wireless subscriptions – ILECs’ aggregate fixed access market share fell from 60.5 percent in 2000 to *less than 18 percent* by mid-2013.<sup>8</sup> These facts demonstrate that the vast majority of consumers are well aware of the choices available to them and view IP-based and wireless services as meeting their needs.

On the wholesale side, the transition to IP-based access services—available from a wide variety of competitors—is well underway. Whereas the wholesale market was once dominated by DS1- and DS3-capacity links provided predominately by ILECs, today’s carrier-grade wholesale marketplace has tilted firmly and irrevocably toward higher-capacity Ethernet services offered by a collection of ILECs, CLECs, and cable providers, none of whom dominates the market. By 2018, U.S. carrier Ethernet revenues are expected to top \$10 billion.<sup>9</sup> Indeed, equipment manufacturers have discontinued or are phasing out equipment supporting traditional DS<sub>n</sub> offerings. In short, ILEC-provisioned DS<sub>n</sub> wholesale offerings have declined dramatically as a relevant component of the marketplace.

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<sup>6</sup> See Declaration of Dr. Kevin Caves ¶ 26 (Oct. 6, 2014), attached as Appendix B to Petition for Forbearance of the United States Telecom Association, WC Dkt. No. 14-192 (Oct. 6, 2014) (“Caves Decl.”). See also Declaration of Professor John Mayo at ¶ 16 (Oct. 6, 2014) (reporting cut-the-cord rate of almost 42 percent based on independent research), attached as Appendix C to Petition for Forbearance of the United States Telecom Association, WC Docket No. 14-192 (Oct. 6, 2014).

<sup>7</sup> See *Mid-2013 Local Telephone Competition Report* at 2, Figure 1 (showing switched access lines and VoIP subscriptions totaling slightly over 135 million lines).

<sup>8</sup> Caves Decl. ¶¶ 10, 12.

<sup>9</sup> Frost & Sullivan, Research Preview for the Business Carrier Ethernet Services Market Update, 2014 (2014) (“Frost & Sullivan Report”).

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These facts present difficult challenges for ILECs working to transition their networks and remain competitive. As Chairman Wheeler recently stated, “at this moment, only fiber gives the local cable company a competitive run for its money,” and policy-makers therefore must work to promote additional fiber deployment.<sup>10</sup> Rules that effectively require ILECs to maintain redundant networks would divert capital away from necessary upgrades, and thus would impede rather than promote the Chairman’s goals. As the Commission’s *National Broadband Plan* noted, “requiring an incumbent 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>11</sup> Chairman Wheeler highlighted this point last year, stating that “[d]ue in part to outdated rules, the majority of the capital investments made by U.S. telephone companies from 2006 to 2011 went toward maintaining the declining telephone network, despite the fact that only one-third of U.S. households use it at all.”<sup>12</sup> Moreover, to maintain legacy networks amidst a dwindling user base, ILECs would need to either recoup costs from a smaller universe of users by raising per-minute or per-megabyte rates or sell services at rates well below their actual costs, further starving efforts to transition to IP.

There is no reason to force ILECs into this impossible position. Once an ILEC deploys a fiber network, most of these remaining customers voluntarily choose to move to this new network. Verizon, for example, states that seven out of eight customers choose to migrate to

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<sup>10</sup> Tom Wheeler, Chairman, FCC, “The Facts and Future of Broadband Competition,” Prepared Remarks at 1776 Headquarters, Washington, D.C., at 4 (Sept. 4, 2014), *available at* [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-329161A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-329161A1.pdf).

<sup>11</sup> FCC, *Connecting America: The National Broadband Plan* at 49 (Mar. 2010) (“*National Broadband Plan*”), *available at* <http://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf>.

<sup>12</sup> Tom Wheeler, Chairman, FCC, Prepared Remarks at Silicon Flatirons, University of Colorado Law School, Boulder, Colorado at 5 (Feb. 10, 2014), *available at* [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-325531A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-325531A1.pdf).

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fiber-based services once Verizon deploys a fiber network, leaving only about 6 percent of customers in the area on Verizon’s copper network.<sup>13</sup>

The question thus is how the Commission can best ensure that customers served by legacy facilities are adequately protected without unduly hindering the transition to more modern networks and services, which will benefit *all* customers. To be sure, CenturyLink appreciates the Commission’s intention to plan, rather than merely react to, the eventual discontinuance of legacy networks and services. It also understands the Commission’s interest in ensuring that these transitions do not undermine its fundamental public policy objectives. At the same time, there is a real risk that the Commission’s efforts to “manage” this transition by adopting more stringent rules would delay this transition and its attendant benefits: new, more reliable and better-functioning services; lower prices; and meaningful competitive alternatives. Moreover, by establishing rules that enshrine today’s presumptions and offerings, the Commission could distort the marketplace’s natural evolution, such that investment and network architecture decisions are made not according to customer preferences and technological developments, but rather to satisfy top-down mandates. The Commission therefore should work to minimize the burdens and costs of any rules it considers adopting, to make sure they are both necessary and compatible with evolving networks and services.

In particular, the Commission should recognize that copper retirement and discontinuance processes have generally been working well. No party points to any significant problem with these processes. To the contrary, as noted above, customers are migrating in droves to IP-based services *on their own*, eviscerating any claim that they might be damaged by

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<sup>13</sup> See Letter from Maggie McCready, Vice President, Federal Regulatory Affairs, Verizon, to Julie A Veach, Chief, Wireline Competition Bureau, FCC, GN Docket No. 13-5, at 1 (June 2, 2014).

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such transitions. As a result, the Commission should focus on tweaking, rather than overhauling, the copper loop retirement and Section 214 processes. Likewise, in a multi-provider environment that includes not only service providers but numerous independent device manufacturers and other participants, there is no reason to require that any specific market participant supply backup power – and especially no reason to place that obligation on the service provider, which might not supply any of the equipment at issue. Rather, the Commission should embrace the best practices developed by the Communications, Security, Reliability and Interoperability Council (“CSRIC”), and facilitate market responses to the migration away from line-powered copper lines.

### **II. THE COMMISSION SHOULD AVOID IMPOSING NEW, ASYMMETRIC OBLIGATIONS IN THE CONTEXT OF THE SECTION 214(A) DISCONTINUANCE PROCESS**

As the Commission considers how best to promote the IP transition and the interests of consumers during the next phase of the communications marketplace’s development, it should seek out a balanced approach that preserves customer access to retail services without impairing any market participant’s ability to upgrade its offerings and compete in the marketplace. Specifically, it should remember that exit approval requirements are among the very most intrusive forms of regulation available to it, and that such mandates are only appropriate when retail customers will be left without any reasonably comparable alternative following the removal of a given service offering. Discontinuance requirements must always be designed to protect end-user consumers, not specific competitors, and must account for the broader evolution of the marketplace.

Thus, the Commission’s task here is to chart a course that promotes investment, deployment and network upgrades while ensuring that consumers have adequate notification that their options are changing. Its framework should account for the ultra-competitive state of the

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market and the unprecedented number of alternatives available to customers, as well as for the ways in which customers treat different offerings as substitutes for one another.

The Commission’s framework must also account for the inalterable core facts of network economics. The *NPRM* “focuses on the technological revolution involving the transition from networks based on . . . TDM[] circuit-switched voice services running on copper loops to all-Internet Protocol (IP) multi-media networks using copper, co-axial cable, wireless, and fiber as physical infrastructure.”<sup>14</sup> Given the evaporating ILEC subscriber base and the migration of that base to competitive IP-based services provided by cable, CLEC and wireless providers, ILECs face rising per-user costs, and are in the process of transitioning their own networks. ILECs accordingly are now overbuilding their copper networks with fiber not to diminish the service available to customers but rather to provide the very functions that consumers are most demanding. They cannot upgrade their networks, however, if forced to maintain two parallel networks, or to engineer next-generation networks to mimic the functionalities of century-old copper lines. To maintain and promote robust competition, the Commission must ensure that ILECs and their customers are not alone saddled with the costly technologies of the past.

Finally, the Commission must remain mindful of what types of transitions are and are not likely to occur. In particular, it would be a mistake to view the discontinuance issue through the lens of the post-Superstorm Sandy Fire Island experience.<sup>15</sup> While the debate arising from Verizon’s request to discontinue wireline service in Fire Island may have raised awareness of the eventual discontinuance of traditional wireline service, it hardly presented a representative test case for the rest of the country. As Verizon has noted, the devastation from the storm in the area of Fire Island was “unprecedented and unforeseeable, with some areas without commercial

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<sup>14</sup> *NPRM* ¶ 1.

<sup>15</sup> *Id.* ¶¶ 4, 116.

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power or usable infrastructure for many months following the storm.”<sup>16</sup> Verizon’s response to this involuntary discontinuance was further complicated by the unique characteristics of the Fire Island area. Unlike most parts of the country, Fire Island residents had limited choices for wireless service, no wireline voice alternative, and no cable broadband provider. The transitions at issue here are far different. They will generally involve shifts to more robust facilities with enhanced capabilities, in markets with numerous competitors offering products that customers have time and again demonstrated are, to them, equivalent to traditional telephone service. Under these circumstances, the Commission’s charge is clear: It should promote the IP transition by facilitating investment and deployment of next-generation facilities. It should adhere to its precedents limiting the role of discontinuance approval mandates. And it should resist calls to use the Section 214 process as a back-door means of applying expansive new regulation.

In light of the above, the Commission should remain true to its long-standing discontinuance precedents, recognizing that the migration to next-generation facilities is both natural and desirable. The Commission should not hamper this transition by requiring, for the first time, approval for the replacement of one technology for another, the elimination of a wholesale offering absent any demonstrated effect on retail customers, or the elimination of a particular discount plan or pricing structure. Indeed, the Commission should adopt a presumption that discontinuances are permitted in all cases where there exists a reasonably comparable retail alternative. And it should reject efforts by some to require the provision of service matching all the particulars of legacy wireline service, particularly when end users are

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<sup>16</sup> Letter from Frederick E. Moacdieh, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-150, at 1-2 (filed June 7, 2013).

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voting with their feet – and their dollars – by choosing not to purchase services with those characteristics.

**A. The Migration from Legacy Facilities to Next-Generation Facilities is Part of the Natural Life-Cycle of Communications Networks, and Should Be Celebrated, Not Feared.**

Like the retirement of copper loops, the discontinuance of legacy services following deployment of more capable and efficient facilities is a positive development entirely consistent with the evolution of communications services. All communications services progress through a natural life cycle in which mature services are gradually replaced with new services that offer more attractive features. Today, this life cycle is epitomized by the replacement of legacy time-division multiplexing (“TDM”) platforms such as Frame Relay and ATM by newer services, such as Ethernet.<sup>17</sup> This transition has been entirely market-driven. Many areas served by CenturyLink have reached, or are rapidly approaching, the “tipping point” where a critical mass of customers have transitioned away from legacy TDM services to more current and capable technologies, making the continued provision of those legacy services impractical, inefficient, and inimical to consumers’ interests. Burgeoning capacity needs have reduced the preeminent role once played by DSn-capacity facilities, culminating in a decisive and irreversible shift of the enterprise marketplace to competitively provisioned, packet-based Ethernet services.<sup>18</sup> Ethernet

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<sup>17</sup> See Roopashree Honnachari, Frost & Sullivan, *Demystifying Carrier Ethernet Services: No One Size Fits All*, BCS 5-02, at 1 (Apr. 6, 2011) (noting that Ethernet has “emerged as an attractive service option for customers migrating from ATM, Frame Relay, SONET and Private Line services”). Indeed, the Commission has likened this transition to other extraordinary technological achievements such as the advent of railroads and the telegraph. *Technology Transitions; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, Order, 29 FCC Rcd 1433, 1437-38 ¶¶ 10-11 (2014).

<sup>18</sup> See, e.g., Reply Comments of Alcatel-Lucent, GN Docket No. 13-5, at 2 (filed Aug. 7, 2013) (“[In 2012], Alcatel-Lucent saw IP extension shipments outperform TDM extensions by a wide margin as a consequence of key global IMS developments. North America led the world in the transition to IP networks. . . . [T]raditional TDM voice services have declined at rates as high as

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services are economical substitutes for DS1 and DS3 facilities and provide speeds many times higher than those legacy offerings.

Wireless providers particularly appreciate the flexibility that Ethernet offers because it is easily scalable as demand grows at a particular cell site. This has drastically undercut reliance on DS<sub>n</sub> circuits. For instance, from March 2011 to December 2012 the number of DS1 special access circuits AT&T provided to wireless providers had dropped by more than 30 percent, and AT&T sales of DS1 circuits to wireline customers had likewise begun to decline.<sup>19</sup> Those trends continued in the period from March 2011 to August 2014, when the number of DS1 special access circuits AT&T provided to wireless providers in its incumbent territories dropped by more than 60 percent.<sup>20</sup> CenturyLink's experience is similar – from January 2012 to December 2014, the number of DS1 special access circuits it provides declined by 36 percent.

It is not surprising, then, that customers have increasingly viewed Ethernet services as a superior alternative to traditional services like ATM, Frame Relay, SONET, and Private Line, as well as DS1s and DS3s.<sup>21</sup> Consumer demand has driven the robust growth of the Ethernet

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10% per year, leaving the installed base of Class 5 switch equipment operating at less than two-thirds of its initial engineered capacity.”); Joint Comments of NTCA *et al.*, GN Docket No. 14-126, at 7 (filed Sept. 4, 2014) (reporting that 87 percent of middle mile facilities in use by NECA traffic sensitive pool members in 2014 were Ethernet, compared to 8 percent for DS1 and DS3).

<sup>19</sup> AT&T Reply Comments, Casto Reply Declaration, WC Docket No. 05-25, at ¶¶ 28-29 (filed Mar. 12, 2013).

<sup>20</sup> Letter from Robert C. Barber, General Attorney, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-25, at 5 (Oct. 10, 2014) (“Barber Letter”).

<sup>21</sup> *See, e.g.*, Nav Chandler, IDC, *U.S. Carrier Ethernet Services 2013-2017 Forecast*, IDC #243425 (Sept. 2013) (“Demand for Ethernet connectivity remains robust, in particular for high-bandwidth usage and as an alternative to frame relay or even private line.”); The Insight Research Corporation, *US Carriers and Ethernet Services: 2013-2018*, at 73 (Aug. 2013) (“Customers continue leaving private line and frame relay for Ethernet, as well as placing new applications on Ethernet rather than expanding their use of legacy services.”).

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services market. This migration, which continued to accelerate last year,<sup>22</sup> is widely anticipated to persist into the foreseeable future. U.S. carrier Ethernet revenues, which crossed \$4 billion in 2013, are expected to top \$10 billion in 2018.<sup>23</sup> Equipment manufacturers have discontinued or are phasing out supporting equipment, making it difficult (and soon impossible) to maintain the facilities and equipment used to provide traditional, wireline voice telecommunications services. Even today, when obsolescent legacy equipment fails, CenturyLink technicians are forced to scavenge spare parts from decommissioned assets in the network or try to track them down through after-market sources.

Faced with these marketplace realities, CenturyLink has been developing plans to gradually transition its TDM networks and services to an all-Ethernet network to keep pace with consumers' demand and offer an ever-more-robust range of services. With more than 4,000 central offices, and estimated costs in the billions of dollars, the transition will likely stretch over a decade or longer. To help facilitate this migration, the Commission should continue to recognize the market's irrevocable (and desirable) migration away from DSn-capacity services toward Ethernet offerings and account for *all* competitors in the market. The rise of scalable Ethernet offerings as the industry standard has occurred in a marketplace in which a host of providers compete for customers with disparate needs. As the Commission has recognized, enterprise broadband services frequently bring in revenues sufficient to justify competitive deployment.<sup>24</sup> In recent years, dozens of competitive fiber providers have capitalized on

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<sup>22</sup> Vertical Systems Group, "Mid-Year 2014 U.S. Carrier Ethernet LEADERBOARD" (Aug. 20, 2014), *available at* <http://www.verticalsystems.com/vsglb/mid-year-2014-u-s-carrier-ethernet-leaderboard/> ("During the first half of 2014, more new Ethernet customer ports were installed than during any previous corresponding period.").

<sup>23</sup> Frost & Sullivan Report, *supra* note 9.

<sup>24</sup> *See, e.g., Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, Memorandum Opinion and

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mushrooming bandwidth needs and the falling costs of fiber deployment by providing carrier- and enterprise-grade Ethernet services over their ever-more ubiquitous long-haul and metropolitan networks. There are no “incumbents” in this market segment. Every major cable operator now competes aggressively for enterprise customers.<sup>25</sup> Business Ethernet services are also “being offered by numerous non-incumbents, including . . . CLECs and formerly IP/MPLS virtual network operators (VNOs).”<sup>26</sup> In mid-year 2014, the top ten business Ethernet service providers included tw telecom, Level 3, and XO Communications.<sup>27</sup> XO emphasizes that its network assets include “Ethernet access and services to more than 2 million business locations nationwide.”<sup>28</sup> Level 3 has observed that “the market will continue to move toward Ethernet based services and higher speed interfaces,” and boasts that it has “positioned [itself] to be able to deliver these capabilities for both our own IP network needs as well as those of our

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Order, 22 FCC Rcd, 18705, 18720 ¶ 24 (2007) (“[T]he large revenues [enterprise] customers generate, and their need for reliable service and dedicated equipment, provide a significant incentive to suppliers to build their own facilities where possible, and to carry the traffic of these customers over the suppliers’ own network.”) (citation omitted).

<sup>25</sup> See, e.g., Barber Letter at 2-3 (“Comcast just reported that its business services revenue increased 22 percent in the second quarter of 2014 to an annual run-rate of \$4 billion, and Cablevision similarly reported that its second quarter revenues increased 6.7 percent to \$88 million.”); Corrected Transcript of Time Warner Cable, Inc. (“TWC”), Q4 2012 Earnings Call, at 3-4 (Jan. 31, 2013) (Robert D. Marcus, TWC President & Chief Operating Officer, noting that, in 2012, TWC doubled the number of commercial buildings connected to fiber, and enjoyed “organic growth of more than 20%” among enterprise customers).

<sup>26</sup> Charles Carr, Yankee Group, *Forecast: Carrier Ethernet is Finally Unleashed*, at 4 (Apr. 26, 2011).

<sup>27</sup> Vertical Systems Group, “Mid-Year 2014 U.S. Carrier Ethernet LEADERBOARD” (Aug. 20, 2014), available at <http://www.verticalsystems.com/vsglb/mid-year-2014-u-s-carrier-ethernet-leaderboard/>.

<sup>28</sup> XO Communications, *Network Reach*, available at <http://www.xo.com/why/the-right-network/reach/>.

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customers.”<sup>29</sup> In addition to these market leaders, there are at least 35 other competitive providers providing business Ethernet services in various regions of the U.S. today.<sup>30</sup>

The nationwide migration to Ethernet backhaul services for wireless cell sites also illustrates the intense competition for enterprise broadband services. Cell sites with high traffic volumes produce sufficient demand to justify the deployment of Ethernet or other high-capacity services, thereby attracting multiple bids. As a Time Warner Cable Business Class executive recently observed: “The competitive landscape [for mobile backhaul services] has widened considerably in the last five years. When five years ago there were four or five competitive threats bidding on an opportunity, in many cases today that has tripled, and I’ve even seen quadruple numbers in the market.”<sup>31</sup>

Competitive alternatives are not limited to providers relying on fiber. Competitors relying on unbundled ILEC loops are also transforming the industry with robust deployment of Ethernet over Copper (“EoC”) services. Although EoC is clearly a transitional technology, likely to be supplanted by new non-ILEC fiber deployments over time, today it offers additional options for competitors, with speeds greater than 100 Mbps in certain areas today.<sup>32</sup> Over the

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<sup>29</sup> Level 3 Communications, Inc., Form 10-K, at 18 (SEC filed Feb. 27, 2014), *available at* <http://d11ge852tjjqow.cloudfront.net/NasdaqGlobal-LVLT/fb1d05c4-ab76-4d5b-9974-a2109d013563.pdf>.

<sup>30</sup> *See* Vertical Systems Group, “Mid-Year 2014 U.S. Carrier Ethernet LEADERBOARD” (Aug. 20, 2014), *available at* <http://www.verticalsystems.com/vsglb/mid-year-2014-u-s-carrier-ethernet-leaderboard/>.

<sup>31</sup> *See, e.g.,* Mike Robuck, CED, *Mobile Backhaul a Pillar in TWCBC’s Commercial Services* (Mar. 26, 2014), *available at* <http://www.cedmagazine.com/articles/2014/03/mobile-backhaul-a-pillar-in-twcabc%E2%80%99s-commercial-services>.

<sup>32</sup> *See* Adtran, *High Performance Ethernet*, *available at* <http://www.adtran.com/web/page/portal/Adtran/group/4208>. *See also* Letter from Joshua M. Bobeck *et al.*, Counsel to Mpower Communications Corp., U.S. TelePacific Corp., ACN Communications Services, Inc., Level 3 Communications, TDS Metrocom, LLC, and Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene H. Dortch, Secretary,

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past several years, competitors have successfully launched and marketed EoC services in numerous areas served by CenturyLink.<sup>33</sup> In February 2014, for example, Integra Telecom announced that it had expanded its EoC footprint to 187 on-network Local Serving Offices, enabling the carrier to reach more than 460,000 businesses in over 14,000 commercial buildings in California, Colorado, Idaho, Minnesota, Oregon, Utah and Washington.<sup>34</sup> To be sure, EoC is not likely to serve as a long-term alternative to fiber-based Ethernet, but this option is bridging the gap as competitive fiber is built out, and underscores the wealth of competitive options in the marketplace.

As an ILEC that also provides services as a CLEC out of region, CenturyLink understands the importance of alternative access in helping to facilitate the TDM-to-IP transition. Because CenturyLink's wireline footprint is limited, and having the flexibility to offer new products and services is key to its success, CenturyLink must rely on the services of other wholesale providers to serve its customers and support the strategic services in which it is investing for the future. For instance, in its CLEC service territories, CenturyLink currently obtains Ethernet Local Access to buildings not served by its own network, through a combination of CLECs primarily using their own facilities and EoC, cable companies using fiber and hybrid fiber coax to provide Ethernet, and ILECs offering wholesale services. CenturyLink is currently working toward serving more than [BEGIN CONFIDENTIAL] [REDACTED] [END

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FCC, WC Docket Nos. 10-188, 12-353, GN Docket Nos. 09-51, 13-5, RM-11358, at 5-6 (filed Jan. 25, 2013).

<sup>33</sup> See CenturyLink Petition for Forbearance, WC Docket No. 12-60, Declaration of Ryan Schwertner (filed Feb. 23, 2012).

<sup>34</sup> Press Release, *Integra Increases Ethernet over Copper Access More than 25 Percent* (Feb. 4, 2014), available at <http://www.integratelecom.com/about/news/pages/integra-increases-ethernet-over-copper-access-more-than-25-percent.aspx>.

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CONFIDENTIAL] customer locations through contracts with cable companies. Notably, such cable facilities are completely independent of ILEC networks.

**B. The *NPRM*'s Proposals Regarding Section 214(a) Would Disregard Decades of Direct Precedent.**

The *NPRM* asserts that the Commission is not seeking “to impose any *new* wholesale access obligations on incumbent carriers,”<sup>35</sup> but then proposes to require ILECs, as a condition of discontinuing a service used as a wholesale input, to provide CLECs “equivalent wholesale access on equivalent rates, terms and conditions.”<sup>36</sup> This proposal would contradict existing Section 214 precedent in at least two ways.

*First*, the *NPRM*'s proposals would reverse decades of precedent holding that discontinuance requirements do not apply to wholesale services. To be sure, the Commission concedes that Section 214(a) does not apply to the discontinuance of a wholesale service if there is no effect on service to retail end-users, and states that it does not “propose to change course from this precedent.”<sup>37</sup> However, it then does just that, by proposing to impose a presumption that elimination of a wholesale service “will discontinue, reduce, or impair service” to retail end-users.<sup>38</sup> The Commission suggests that this presumption would be rebuttable,<sup>39</sup> but then proposes to require ILECs that seek to discontinue wholesale services to provide CLECs equivalent wholesale access, *irrespective of any impact*, or the lack thereof, on end-users.<sup>40</sup> Requiring an ILEC to provide CLECs with services that are equivalent to services that the ILEC

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<sup>35</sup> *NPRM* at ¶ 6 (emphasis in original).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* ¶ 102.

<sup>38</sup> *Id.* ¶ 103.

<sup>39</sup> *Id.*

<sup>40</sup> *See id.* ¶ 110.

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is discontinuing would “change course from” the Commission’s precedent<sup>41</sup> by putting “the primary focus” of a service discontinuance on the CLECs using the ILEC services as inputs, rather than on “the end service provided by a carrier to . . . the using public,” which the Commission has always considered the focus of Section 214(a).<sup>42</sup>

*Second*, the *NPRM* breaks with precedent by proposing that the replacement of one facility by another might constitute a “discontinuance” of the facility being replaced under Section 214(a). The Commission has repeatedly held otherwise. Section 214(a) discontinuance requirements arose in a world radically different from today’s, when discontinuance of services provided by state-sanctioned monopolists threatened to leave customers without any service at all. In fact, the discontinuance approval requirement did not even appear in the original Communications Act. Section 214(a) originally was limited to approval of the construction, extension or acquisition of new facilities and transmission over such facilities.<sup>43</sup> Only in 1943 did Congress add the discontinuance limitation, “to minimize service disruptions . . . result[ing] from the *complete monopolization* of the telegraph market. . . .” Its purpose was clear: Congress was concerned that discontinuance by *the only carrier serving a market . . .* would leave the public without adequate communications service.”<sup>44</sup> As the Commission recognized in 1980, Section 214’s discontinuance provision did not apply where one offering was being replaced with another, similar offering:

We believe that application of Section 214 in situations where the accessibility of a service remains virtually unchanged, while the

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<sup>41</sup> *Id.* ¶ 102.

<sup>42</sup> *Western Union Telegraph Co.*, 74 F.C.C.2d 293, 296-97 ¶¶ 7-9 (1979) (“*Western Union*”).

<sup>43</sup> H.R. Rep. No. 73-1918, at 13 (1934) (Conf. Rep.).

<sup>44</sup> *Policy & Rules Concerning Rates for Competitive Common Carrier Servs. & Facilities Authorizations Therefor*, First Report and Order, 85 F.C.C.2d 1, 43 ¶ 128 (1980) (subsequent history omitted) (“*First Competitive Carrier Order*”) (emphasis added).

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method of customer access varies, is not required by the statute and would be inappropriate in a technologically dynamic market.<sup>45</sup>

Indeed, the Commission has traditionally interpreted Section 214(a) to *encourage* and *promote* technological service upgrades. For example, in *Lincoln County*, the Commission held that the “removal” of facilities and associated reconfiguring of the routing of calls from the dismantled facilities to other facilities, without any impact on end users, does not constitute a discontinuance requiring a Section 214 application.<sup>46</sup> The *NPRM* would turn this proposition on its head, treating the shift to superior technology as a “discontinuance” and requiring *de facto* Commission approval for such transitions.

**C. The *NPRM*'s Proposals Regarding Section 214(a) Would Harm Consumers.**

As noted above, competition is rapidly shrinking the ILEC wireline subscriber base. Now, when only one-quarter of all households obtain legacy voice service from an ILEC, and ILEC legacy and VoIP services combined account for less than one-fifth of all U.S. voice connections, the wide range of competitive alternatives discussed above has made discontinuance requirements less important, not more. End users are abandoning ILEC legacy services for a wide assortment of service choices from cable companies, wireless operators, CLECs and other VoIP providers. As a result, consumers are “discontinuing” service more rapidly than ILECs can transition their networks to accommodate users’ demands for non-legacy services. In these circumstances, expansive new discontinuance limitations would undermine, rather than promote, consumer interests.

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<sup>45</sup> *Regulatory Policies Concerning the Provision of Domestic Pub. Message Servs. by Entities Other Than the Western Union Tel. Co. & Proposed Amendment to Parts 63 & 64 of the Comm’n’s Rules*, 75 F.C.C.2d 345, 376 ¶¶ 102-03 (1980) (“*Domestic PMS Order*”), *aff’d sub nom. Western Union Telegraph Co. v. FCC*, 665 F.2d 1112 (D.C. Cir. 1981).

<sup>46</sup> *Lincoln County Tel. System, Inc.*, 81 F.C.C.2d 328, 335 ¶ 22 (1980).

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As the Commission consistently has recognized, exit restrictions impose real harms and are to be avoided except where absolutely necessary. As the Commission explained in 1980’s

*Domestic PMS Order*:

We have no desire to impose burdens on firms wishing to continue providing service in a more efficient and cost-effective manner. A restriction on firms’ ability to do so . . . . would essentially require carriers to subsidize the continued use of . . . facilities to the detriment of [their] ratepayers. Second, by restricting carriers’ ability to respond to changing market conditions in the most efficient technological manner possible, we would hamper their ability to perform in a competitive market.<sup>47</sup>

Similarly, the *First Competitive Carrier Order* acknowledged that a pro-competitive application of the discontinuance approval mandate is appropriate:

[I]n a competitive marketplace ease of exit is essential. If regulatory exit barriers are not lowered, carriers may be discouraged from entering high risk markets for fear that they may not be able to discontinue service in a reasonably short period of time if it proves unprofitable. Ease of exit is also a fundamental characteristic of a competitive market. We have already found that the overall public is best served in these areas by the development of this competition, even though some customer dislocations might be attendant thereto.<sup>48</sup>

More recently, in the *Verizon Expanded Interconnection Order*, the Commission permitted Verizon to discontinue its physical collocation service and offer virtual collocation instead because “requiring it to continue offering . . . physical collocation services . . . creates a financial burden for Verizon, due to the administrative burdens of maintaining two separate regulatory offerings for the same service and the opportunities for regulatory arbitrage.”<sup>49</sup> And in the *Wireline Broadband Order*, the Commission recognized the need for a pro-competitive

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<sup>47</sup> *Domestic PMS Order*, 75 F.C.C.2d at 376 ¶ 104.

<sup>48</sup> *First Competitive Carrier Order*, 85 F.C.C.2d at 49 ¶ 147.

<sup>49</sup> *Verizon Tel. Cos.*, Order, 18 FCC Rcd 22737, 22743 ¶ 10 (2003) (“*Verizon Expanded Interconnection Order*”).

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application of Section 214(a),<sup>50</sup> so as not to burden carriers with “costly redundant systems and duplicative processes that result in operational inefficiencies”<sup>51</sup> and thereby “harm the public interest by impeding the deployment of innovative broadband infrastructure and services responsive to consumer demands.”<sup>52</sup> Thus, inefficiencies in the form of impediments to technological innovation that are caused by having to continue providing an unneeded service have always been a significant factor justifying discontinuance.

The rationale for strict discontinuance requirements has been undercut even more by the technological metamorphoses and other sweeping changes in the telecommunications market over the past several decades. As described above, the accelerating intensity of competition and precipitous collapse of ILEC legacy businesses have revolutionized the retail telecommunications marketplace. When ILECs transition to new technologies, the availability of the services at issue “remains virtually unchanged” – only “the method of customer access varies.”<sup>53</sup> Indeed, consumers are abandoning ILEC wireline legacy services for other platforms and technologies on their own, irrespective of ILECs’ migration to new technologies. Under these circumstances, strict wholesale conditions on discontinuance applications are “not required by the statute and would be inappropriate...”<sup>54</sup> The *NPRM*’s approach would impose

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<sup>50</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14907-08 ¶¶ 100-01 (2005) (“*Wireline Broadband Order*”) (granting blanket discontinuance of transmission component of Internet access service on a stand-alone basis), *aff’d sub nom. Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007).

<sup>51</sup> *Id.* at 14889 ¶ 68.

<sup>52</sup> *Id.* at 14907-08 ¶ 100 n.302. *See also id.* at 14891 ¶ 71 (“these costs, inefficiencies, and delays” can “substantially impede network development” and technological innovation).

<sup>53</sup> *Domestic PMS Order*, 75 F.C.C.2d at 376 ¶ 103.

<sup>54</sup> *Id.*

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“constraints on broadband innovation and infrastructure investment”<sup>55</sup> and leave ILECs and their customers saddled with “costly redundant systems and duplicative processes.”<sup>56</sup>

Consumers already are abandoning ILEC legacy wireline services in favor of other technology platforms and providers, such as Ethernet over Fiber. If ILECs were blocked from transitioning their operations to the services sought by consumers, consumers would be stuck with services they do not want – or forced to shift to other providers – and ILECs will be kept out of the new services markets as viable competitors. The forced inefficiencies and costs that would be imposed by the Commission’s proposal thus could harm competition and consumers. ILECs’ competitors, of course, would not face these constraints. They could upgrade their networks without worrying about the immense operational expenses associated with running duplicative networks – and without subjecting customers to the charges necessary to cover those costs.

Ultimately, then, the requirements contemplated by the *NPRM* would render ILECs’ offerings far more expensive than their competitors’, placing a heavy thumb on the economic scale and effectively *reducing* competition. Such a retrograde approach to discontinuance requirements has no place in the broadband era and would hobble the IP transition, harming consumers.

**D. The Commission Should Establish a Rebuttable Presumption in Favor of Approving Discontinuance of a Retail Service if at Least One Competitive Alternative is Available.**

Given the dramatic erosion of the ILECs’ subscriber base and the migration of that base to competitive IP-based services provided by cable, CLEC and wireless providers, ILECs and other carriers should be permitted to discontinue declining end user services for which any

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<sup>55</sup> *Wireline Broadband Order*, 20 FCC Rcd at 14899 ¶ 86.

<sup>56</sup> *Id.* at 14889 ¶ 68.

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competitive alternatives are available. Detailed criteria that would effectively require that the exact same service be available in order to discontinue a retail service would contravene the Commission’s interpretation of Section 214(a), be overly burdensome, and halt the IP transition.

### 1. A SECTION 214(A) RETAIL SERVICE DISCONTINUANCE APPLICATION SHOULD BE GRANTED UNLESS IT CAN BE SHOWN THAT THERE ARE NO REASONABLE SUBSTITUTES AVAILABLE.

Consistent with the purpose of Section 214(a) and the Commission’s traditional application thereof, discontinuance of a retail service should be granted if there are any reasonable substitute services available from any source, via any technology or platform. The discontinuing carrier should be considered only one possible source of replacement services. Moreover, as discussed above, the possible impact of discontinuance on resellers and other carriers using the discontinued service as an input is irrelevant under applicable precedent, except insofar as end users will be left with no retail options.<sup>57</sup>

Under Commission precedent, discontinuance will be granted “when service alternatives are likely to exist,”<sup>58</sup> “even though some customer dislocations might” result.<sup>59</sup> Reasonable alternatives from any source have been held to be adequate substitutes for a discontinued service, justifying grant of a Section 214(a) application.<sup>60</sup> That reasonable alternative services may be more “administratively burdensome and costly” than the discontinued service does not weigh heavily against discontinuance if they are still affordable.<sup>61</sup>

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<sup>57</sup> See *NPRM* ¶ 102 & n.198; *Western Union*, 74 F.C.C.2d at 296 ¶ 7.

<sup>58</sup> *First Competitive Carrier Order*, 85 F.C.C.2d at 43 ¶ 128.

<sup>59</sup> *Id.* at 49 ¶ 147.

<sup>60</sup> See, e.g., *Rhythms Links Inc. Section 63.71 Application to Discontinue Domestic Telecommunications Services*, 16 FCC Rcd 17024, 17027 ¶ 8 (CCB 2001); *AT&T Corp.*, Memorandum Opinion and Order, 14 FCC Rcd 13225, 13229-33 ¶¶ 8-16 & n.27 (IB 1999) (“*AT&T High Seas Order*”), *recon. denied*, 16 FCC Rcd 13636 (IB 2001).

<sup>61</sup> *Verizon Expanded Interconnection Order*, 18 FCC Rcd at 22751-52 ¶¶ 27-29.

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Commission precedent makes clear that discontinuances are permissible so long as reasonably comparable retail services are available to consumers, even if the alternatives are not functionally identical and/or are offered at higher prices. In the *Verizon Copper Discontinuance Order*, the Wireline Competition Bureau found that, because “almost all of the . . . services previously available over copper . . . are also available over fiber,” there is minimal, if any, need for the discontinued services or facilities.<sup>62</sup> Likewise, the Commission also affirmed the grant of AT&T’s request to discontinue its Terrestrial Television Service (“TTS”) to certain locations and universal TTS connectivity between the remaining served locations partly on the grounds that satellite services provided a “comparable alternative to” TTS and that point-to-point connections constituted an adequate replacement for the universal connectivity that was eliminated.<sup>63</sup>

Similarly, in the *AT&T High Seas Order*, AT&T was permitted to discontinue its High Seas high frequency radio-telephone service because its customer base was “steadily shrinking” and “reasonable alternative services are available.”<sup>64</sup> The International Bureau found that, although satellite-based radio telephone services imposed higher costs and offered less robust coverage than AT&T’s High Seas service, those differences did not render satellite-based service “nonviable as a substitute” for the High Seas service, and thus did not preclude approval of AT&T’s request to discontinue those offerings.<sup>65</sup> The Bureau also found that customers could

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<sup>62</sup> *Section 63.71 Application of Verizon New Jersey Inc. and Verizon New York Inc. for Authority to Discontinue Domestic Telecommunications Services*, Order, 28 FCC Rcd 13826, 13830 ¶ 10 (WCB 2013) (emphasis added).

<sup>63</sup> *Am. Telephone and Telegraph Co.*, Memorandum Opinion and Order, 8 FCC Rcd 6801, 6802 ¶ 13, 6803 ¶ 16 (1993).

<sup>64</sup> *AT&T High Seas Order*, 14 FCC Rcd at 13229 ¶ 8.

<sup>65</sup> *Id.* at 13229-30 ¶¶ 9-11.

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use other types of services, such as cellular service, noting that “[v]iable alternatives to a discontinued service need not be the same type of service.”<sup>66</sup>

Given this precedent, the Commission should impose a strong presumption that discontinuance requests will be granted so long as retail customers have a reasonably comparable service available to them – even if it is not identical, or if it is somewhat more expensive. As demonstrated above, moreover, there are many alternatives to ILEC-provided services, and customers are migrating to those alternatives *en masse*, even absent any ILEC discontinuance. Such service substitutions that consumers have been making point the way to the appropriate approach to service substitution under Section 214(a). Specifically, the Commission should amend Section 63.71 of its rules, which sets out the streamlined procedures governing discontinuance applications.<sup>67</sup> Today, the vast majority of consumers have voluntarily “discontinued” legacy ILEC wireline services in favor of wireless and VoIP offerings, demonstrating their view that these newer services are reasonable alternatives to the abandoned services. The Commission should recognize this precedent and hold that if an ILEC (or, for that matter, any carrier) seeking to discontinue TDM voice service in a given area can certify that all affected retail customers have access to facilities-based interconnected VoIP, circuit-switched cable, 3G wireless, or TDM voice service, either from the discontinuing carrier or at least one other provider, that application will be subjected to Section 63.71’s streamlined processes. Consumers have demonstrated that all of those services are reasonably interchangeable and that copper-based TDM voice service is the least desirable of all. Section 214(a) should not be

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<sup>66</sup> *Id.* at 13233 ¶ 16 n.27 (emphasis added).

<sup>67</sup> The Commission normally authorizes discontinuance under a streamlined process in 31 or 60 days, for non-dominant or dominant carriers, respectively, “unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected.” 47 C.F.R. § 63.71(a)(5)(i).

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interpreted to require that a substitute service have all of the characteristics of the undesirable service being discontinued.

### **2. THE COMMISSION SHOULD NOT PRESCRIBE DETAILED CRITERIA FOR SUBSTITUTE SERVICES.**

The Commission accordingly should not prescribe detailed criteria that a service would have to meet in order to be considered a reasonable substitute for a discontinued service. The *NPRM* cites a Public Knowledge filing identifying ten “core technical features of the [PSTN].” Public Knowledge’s list is based on a study that presumes that the goal of the IP transition is to ensure that the “new IP environment delivers the same capabilities, reliability, and other critical aspects of the old technologies” being replaced.<sup>68</sup> This view is badly mistaken. As described above, Section 214(a) does *not* require that a reasonable substitute be an “exact substitute[] for” the discontinued service.<sup>69</sup> Consumers have shown themselves to be eager to abandon the supposedly “critical aspects of” TDM wireline voice service for other technologies. They have chosen the mobility and convenience of wireless services and the lower cost, greater capacity and flexibility of VoIP and other IP-enabled features over ILEC legacy services. The study upon which Public Knowledge’s “ten attributes” are based thus is predicated on a fundamentally flawed legal and economic premise – namely, that the Commission’s role in facilitating the IP transition is to perpetuate the specific characteristics (and costs) associated with the legacy PSTN rather than facilitating a shift to the services and features that actual customers demand.

In nearly every case, the “attribute” that Public Knowledge claims is essential has been repudiated by customers, who have voted with their feet and their dollars. For example, the

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<sup>68</sup> CTC Technology & Energy, *A Brief Assessment of Engineering Issues Related to Trial Testing for IP Transition* at 1 (Jan. 13, 2014) (“*CTC Study*”), attached to Letter from Harold Feld, *et al.*, Public Knowledge, to Tom Wheeler, Chairman, FCC, GN Docket No. 12-353 (Jan. 13, 2014) (letter cited in *NPRM* ¶ 94).

<sup>69</sup> *AT&T High Seas Order*, 14 FCC Rcd at 13229 ¶ 9.

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study states that successor technologies should be required to achieve “the standards of the PSTN in its current state”<sup>70</sup> – *i.e.*, availability of 99.9 percent.<sup>71</sup> But customers are fleeing from legacy services offering this level of availability. Likewise, Public Knowledge’s study identifies call persistence as “one of the distinguishing attributes of the wireline network, relative to wireless.”<sup>72</sup> If so, then the overwhelming movement from wired to wireless offerings demonstrates specifically that customers *do not* value persistence enough to pay for it.

Moreover, efforts to build the PSTN “attributes” cited by Public Knowledge into the discontinuance regime would short-circuit ongoing policy debates over just what characteristics should and should not be mandated in a competitive, multi-platform communications environment, and would unfairly target ILECs for special obligations that their competitors do not face. For example, the attribute of “system availability” implicates the backup power issue that is addressed above, and subject to inquiry elsewhere in the *NPRM*.<sup>73</sup> Similarly, questions regarding 9-1-1 service are being addressed in other proceedings.<sup>74</sup> Issues such as these present industry-wide questions, and are properly considered in industry-wide proceedings. Addressing them via the discontinuance process will only ensure that they apply disproportionately to ILECs, which will account for a large portion of the discontinuance applications in the foreseeable future, and not to other providers offering equivalent competing services.

Finally, the Public Knowledge proposal should be rejected because it would be unwieldy and time-consuming. The criteria chosen by the study, if applied to individual discontinuance

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<sup>70</sup> *CTC Study* at 5.

<sup>71</sup> *Id.* at 18-19.

<sup>72</sup> *Id.* at 24.

<sup>73</sup> *See id.* at 18; *NPRM* ¶¶ 31-48.

<sup>74</sup> *See, e.g., 911 Governance and Accountability*, Policy Statement and Notice of Proposed Rulemaking, 29 FCC Rcd 14208 (2014).

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applications, would require intensive, detailed factual inquiries into call quality, device interoperability, call functionality, cybersecurity and other highly technical issues that would take months to resolve. The discontinuance process should remain streamlined in most cases and should establish a simple, easy to apply presumption for reasonable substitute services.

### **E. Rate Changes, Including the Elimination of Discount Plans, Should Not Require Section 214 Approval.**

The *NPRM* asks whether elimination of a wholesale term discount plan or other pricing mechanism might constitute discontinuance under Section 214(a).<sup>75</sup> As the Commission acknowledges, this proposal would be a departure from long-established Commission precedent, which holds that a change in rates, such as the elimination of a discount plan, does not require Commission approval under Section 214.<sup>76</sup> In fact, “[a] change in rates has *never* been held to be a discontinuance, reduction or impairment of service to a community requiring prior Commission authorization.”<sup>77</sup> And for good reason: The elimination of a term discount option would “not in fact discontinue, reduce, or impair any service at all.”<sup>78</sup>

As the Commission has explained elsewhere, the Section 214(a) discontinuance requirements were never intended primarily to protect against higher rates resulting from a discontinuance. In *Western Union*, where the discontinuance of certain facilities resulted in higher rates for substitute services, the Commission explained that:

[T]he relationship between Sections 201-205 and Section 214(a) of the Act should be put into perspective. The legislative intent

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<sup>75</sup> *NPRM* ¶ 104.

<sup>76</sup> *Id.* at n.201 (citing *Amer. Tel. and Tel. Co. Long Lines Department, Revisions to Tariff FCC Nos. 258 and 260 (Series 5000) – Termination of TelPak Service, Transmittal No. 12714*, 64 F.C.C.2d 959, 965 (1977) (“*AT&T Tariff Order*”); *Aeronautical Radio v. FCC*, 642 F.2d 1221, 1233 (D.C. Cir. 1980)).

<sup>77</sup> *AT&T Tariff Order*, 64 F.C.C.2d at 965 (emphasis added).

<sup>78</sup> *Aeronautical Radio*, 642 F.2d at 1233.

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underlying the Communications Act . . . is that rates, terms, and conditions of service are to be established through the tariffing process as governed by Sections 201-205. . . . On the other hand, the notice and discontinuance requirements of Section 214(a) are directed at preventing a loss or impairment of a service offering to a community. . . . Accordingly, use of the Section 214 discontinuance process to challenge changes in rates, terms, and conditions of service would be inappropriate.<sup>79</sup>

Thus, “the fact that a carrier’s tariff action may increase costs or rates does not give rise to any requirement for Section 214(a) certification.”<sup>80</sup>

A departure from this long-standing precedent would represent a radical shift in Commission policy that would needlessly suppress providers’ flexibility to migrate away from legacy services. As the D.C. Circuit has recognized, such a shift would result in “enormous” “attendant burdens” because “virtually every rate increase might be argued to be a discontinuance of ‘service’ requiring a prior finding of convenience and necessity by the Commission.”<sup>81</sup> This kind of painstaking approval process would impose unreasonable and unnecessary constraints where, as here, the Commission has not (and cannot) point to any harm that has resulted from the application of its long-established precedent. Even if the Commission believes that it should inject itself into the discount plans negotiated at arms’ length between sophisticated businesses – which it should not do – the Section 214 discontinuance mechanism is not the appropriate forum for such intervention.

### **III. THERE IS NO DEMONSTRATED NEED FOR SIGNIFICANT CHANGES TO THE COMMISSION’S COPPER RETIREMENT RULES**

In the *NPRM*, the Commission proposes to expand and add more detailed requirements to its copper retirement rules. Specifically, the *NPRM* would broaden the circumstances requiring

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<sup>79</sup> *Western Union*, 74 F.C.C.2d at 295 ¶ 6.

<sup>80</sup> *Id.* at 297 ¶ 9.

<sup>81</sup> *Aeronautical Radio*, 642 F.2d at 1233.

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notification to affected CLECs, require that additional information be provided to those CLECs, and extend disclosure requirements to affected *retail* customers, as well as states and the Department of Defense. The Commission also seeks comment on facilitating the sale or auction of copper facilities that ILECs intend to retire.

CenturyLink recognizes the importance of meaningful notice to customers affected by proposed modifications to its network, including the retirement of copper facilities. Indeed, CenturyLink already voluntarily fulfills most of the additional requirements proposed in the *NPRM*, either because it has agreed to do so by contract or simply because it makes good business sense. In particular, CenturyLink provides meaningful notice to interconnecting CLECs that will be affected by the retirement of a copper facility in each of the circumstances outlined in the *NPRM*. CenturyLink also informs retail customers that their service is going to be moved to an upgraded facility, if that transition will directly affect them. To do otherwise would potentially harm CenturyLink's relationship with its customers. There is no easier way to lose a retail customer, for example, than to dig up their rose garden (to bury a fiber optic cable) or temporarily disconnect their service (to install enhanced electronics at their home), without giving them advance notice. CenturyLink has a strong interest in avoiding such negative customer experiences, particularly in today's competitive marketplace, where two-thirds of households in its service area have already left its network. CenturyLink also has an obvious interest in notifying its existing and prospective customers of the new and enhanced services that will be made available to them through upgraded facilities.

For all these reasons, CenturyLink has established an effective and timely process for notifying affected wholesale and retail customers of upcoming copper retirements and other changes to their underlying facilities. This process has drawn only occasional requests for

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additional time from interconnecting carriers and virtually universal positive feedback from retail customers, who are typically elated by the prospect of faster broadband speeds and a meaningful alternative to cable competitors. Given its long-standing and effective notification process, CenturyLink sees little need for additional rules in this area.

CenturyLink also is concerned that overly burdensome and intrusive network modification rules could interfere with the transition to next-generation networks and services. In August, CenturyLink announced the launch of gigabit broadband service to 16 cities.<sup>82</sup> Over time, it hopes to deploy such services in other locations as well. Nevertheless, given the rural character of much of its service territory, CenturyLink's transition to all-fiber networks is likely to be an extended process.

The pace of CenturyLink's deployment of fiber facilities will depend, in part, on the ease with which the company can decommission legacy facilities and services and transition customers to new facilities and services. Over time, as more and more customers leave the legacy copper network, the cost of maintaining that network will eventually exceed the revenues it generates. At that point, it is logical to transition the remaining customers to the fiber network and retire the copper facilities. Rules that significantly delay CenturyLink's ability to retire obsolete copper facilities, or impede CenturyLink's capacity to provision new or enhanced services on the replacement fiber network, will extend the "payback" period (*i.e.*, the number of years it will take CenturyLink to recoup its investment) for fiber deployments, forcing the company to forego some fiber deployments that might otherwise occur. In such cases, CenturyLink may choose to devote more of its limited capital budget in areas with greater

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<sup>82</sup> Mark Hachman, *CenturyLink Brings Gigabit Broadband to 16 Cities: Seattle, Denver, and More*, PC World (Aug. 5, 2014), available at <http://www.pcworld.com/article/2461431/centurylink-brings-gigabit-broadband-to-16-cities-seattle-denver-and-more.html>.

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returns, such as the expansion of data centers for its burgeoning data hosting and cloud service business.

CenturyLink addresses the utility and impact of the Commission’s proposed rules below. Of particular concern are the detailed notification requirements the *NPRM* proposes for affected retail customers, which are both unnecessary and beyond the scope of Section 251(c)(5). Most troubling are proposed rules designed to prevent ILECs from “upselling” new and enhanced services, which would potentially undermine the business case for deployment, discourage consumers from obtaining the benefits of superior service, and run afoul of the First Amendment. The Commission’s rules and enforcement power provide the Commission ample authority to address concerns of misleading marketing techniques, without the need for rules that will dampen broadband investment and adoption.

### **A. The Copper Retirement Process Is Working Well Today.**

In 1996, the Commission adopted rules implementing Section 251(c)(5)’s network disclosure requirements.<sup>83</sup> In 2003—now more than a decade ago—the Commission amended those rules to establish notification requirements applicable to ILECs’ retirement of copper loops.<sup>84</sup> To CenturyLink’s knowledge, these rules are working as intended.

CenturyLink describes below its current wholesale and retail notification processes, which already fulfill many of the additional requirements proposed in the *NPRM*. Last year, CenturyLink issued notices of copper retirement for 68 distribution areas. In response, CenturyLink received no objections. In 2013, CenturyLink received a single request for

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<sup>83</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19468-19508 ¶¶ 165-259 (1996) (“*Second Local Competition Order*”) (subsequent history omitted).

<sup>84</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC 16978, 17146-48 ¶¶ 281-84 (2003) (“*Triennial Review Order*”) (subsequent history omitted).

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additional time to transition four customers, which CenturyLink quickly accommodated. On the retail side, CenturyLink’s network upgrades have not generated opposition either.

### 1. CENTURYLINK’S WHOLESALE NOTIFICATION PROCESS.

Before retiring a copper loop or portion of a loop (including the feeder portion of the loop) in a non-disaster situation,<sup>85</sup> CenturyLink takes several steps to ensure that wholesale providers directly or potentially affected by the proposed retirement have adequate time to adjust to the upcoming network change. At least 90 days before the retirement date, CenturyLink notifies affected telephone exchange service providers (*i.e.*, those using copper facilities proposed to be retired) of the proposed retirement by email, with detailed information, including the Circuit ID, cable and pair numbers, and impacted addresses.<sup>86</sup> CenturyLink alerts other CLECs operating in the affected area of the proposed retirement, by email and through CenturyLink’s CLEC-facing system, Interconnect Media Access (“IMA”) interface.<sup>87</sup> Finally, CenturyLink files a public notice with the Commission consistent with its copper retirement rules.<sup>88</sup>

### 2. CENTURYLINK’S RETAIL NOTIFICATION PROCESS.

CenturyLink also provides notice of a network upgrade to affected consumers, *i.e.*, those to whose residence or property we will need access or who will need a new modem or other customer premises equipment (“CPE”). It is important to note that this process is distinct from

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<sup>85</sup> In times of man-made disaster, CenturyLink immediately contacts affected wholesale customers by email, makes appropriate filings at the Commission and replaces damaged facilities as quickly as possible.

<sup>86</sup> *See* Exhibit A. The Circuit ID enables the service provider to pinpoint the affected circuit, while the cable and pair numbers specifically identify the facilities being retired.

<sup>87</sup> CenturyLink generally does not provide notice to information service providers (ISPs) because they do not typically interconnect with CenturyLink’s last-mile network.

<sup>88</sup> CenturyLink does not disable copper loops or subloops or “de facto” retire them. If a loop or subloop becomes inoperable, CenturyLink replaces that facility. *See NPRM ¶¶ 52-54.*

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the copper retirement process. The transfer of a customer from a copper loop (or subloop) to a fiber-to-the-home (“FTTH”) or fiber-to-the-curb (“FTTC”) loop, for example, does not necessarily result in retirement of the copper loop (or subloop) that previously was used to serve the customer. The copper loop (or subloop) will be disconnected but may well remain in service. Indeed, CenturyLink currently does not retire copper loops (and subloops) in this situation. Regardless of whether the old loop (or subloop) is retired, CenturyLink notifies the customer of the transition if they will be temporarily out of service, if access to the customer’s property is necessary, or if the customer will need new CPE.

CenturyLink uses a multi-step process to provide such notification. For example, in 2012, CenturyLink initiated a 1 gigabit-capable fiber-to-the-premises (“FTTP”) overbuild deployment to 48,000 homes in Omaha. More than six months prior to the deployment, CenturyLink began notifying affected customers of the network upgrade by postcard,<sup>89</sup> followed by repeated attempts, using various means, to make sure that all affected customers were aware of the upcoming transition. Consistent with its DSL contracts, CenturyLink notified affected consumers at least 30 days in advance of the upgrade.<sup>90</sup> If access to a customer’s premise was necessary, CenturyLink sent a letter to the consumer asking them to set up an appointment for a service call. If the consumer did not contact CenturyLink, the company followed up with a phone call, and, if the consumer still could not be reached, sent a technician to the customer’s door. In advance of these individualized contacts, CenturyLink left door hangers notifying

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<sup>89</sup> See Exhibit B. CenturyLink also sent letters to CLECs whose end users would be affected by the network upgrade, asking them to notify those end users. See Exhibit C.

<sup>90</sup> In some cases, no action was required by the consumer—such as when a new piece of electronics needed to be installed on the side of their house—though their service might be briefly interrupted. See Exhibit D. In other circumstances, the consumer could either choose to self-install a new modem, which would be shipped to the service address, or arrange for a CenturyLink technician to install the modem. See Exhibit E.

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customers when a technician would be in their neighborhood. Each notification sent to a customer included a link to a website with a “Frequently Asked Questions” section that provided information about the migration process and the services available to the customer over the upgraded network.<sup>91</sup>

The CenturyLink group that that made these consumer contacts does not sell products, so there was no attempt to “upsell” customers. These personnel essentially assumed that affected customers would retain their existing services on the new fiber facilities. At the same time, CenturyLink of course separately marketed new and enhanced services to consumers who would now be served by a superior network. Indeed, the very reason that CenturyLink decides to overbuild an area such as Omaha – and presumably the reason that *any* provider invests millions of dollars to upgrade its network – is to win new customers and provide new and upgraded services to existing customers, which is essential to recovering the substantial expense of deploying these facilities. In Omaha and other areas, CenturyLink’s experience has been that customers are excited, not dismayed, to learn that it will provide faster broadband speeds and a robust alternative to services provided by cable competitors.

### **B. The Commission Should Modify Its Proposed Notification Requirements for Interconnecting Competitors.**

As noted, burdensome and unnecessary constraints on copper retirement will delay the benefits of the fiber-based networks that are replacing those copper facilities. While the Commission appropriately proposes to maintain the notice-only approach for copper retirement, the viability of that approach is subject to two important caveats.

*First*, an overly stringent discontinuance process for copper-based services will effectively extend Commission *approval* requirements to the retirement of copper networks. The

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<sup>91</sup> See Exhibit F.

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*NPRM* states that the copper retirement process requires only notice “[s]o long as no service is discontinued in this process (e.g., TDM basic voice)[.]”<sup>92</sup> This implies that if a copper retirement will result in discontinuance of one or more services, then the ILEC will be required to obtain Commission approval before retiring those facilities. And, more troubling, if the required discontinuance process is overly restrictive, the ILEC may be significantly delayed, or even precluded from, discontinuing the service and retiring the underlying copper network, particularly if the legacy service cannot economically be provided over the fiber network.<sup>93</sup>

*Second*, unreasonable changes in the Commission’s copper retirement rules could significantly delay or even halt copper retirement and associated fiber deployment, or discourage customers from transitioning to new, more functional services. CenturyLink highlights below its concerns with particular proposed requirements for notification to wholesale and retail customers, as well as proposed certification and record-retention requirements.

### **1. ILECS CANNOT ASSESS THE IMPACT OF COPPER RETIREMENT ON A WHOLESALE PROVIDER’S RATES, TERMS AND CONDITIONS.**

In the *NPRM*, the Commission proposes to require ILECs to provide to interconnecting competitors a description of the expected impact of a proposed copper retirement, “including but not limited to any changes in prices, terms, or conditions that will accompany the planned changes.”<sup>94</sup> This is impossible. When it provides a copper facility, such as an unbundled copper loop, to a CLEC, an ILEC does not know what services the CLEC chooses to provide over that

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<sup>92</sup> *NPRM* ¶ 5.

<sup>93</sup> Section II of these Comments identifies particular concerns with the Commission’s proposed changes to the discontinuance process. The Commission’s dramatic expansion of the Section 214 discontinuance standard in the Declaratory Ruling appears to raise the prospect that, at least in some cases, a request to discontinue a service may be denied if the ILEC’s replacement service does not include one or more features of the service to be discontinued, regardless of whether those features are listed in the applicable tariff. *See id.* ¶¶ 117-18.

<sup>94</sup> *Id.* ¶ 57.

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facility, or what replacement service or arrangement would be best for the CLEC when that copper facility is retired. The ILEC thus cannot tell the interconnecting competitor how the prices, terms, and conditions of its service will change. That is something the competitor will have to determine itself.

### **2. THE COMMISSION SHOULD NOT REQUIRE NOTIFICATION TO ISPs.**

The proposed rules attached to the *NPRM* appear to require that notice of proposed copper retirements be provided to each information service provider “that directly interconnects with the incumbent LEC’s network.”<sup>95</sup> However, ISPs do not typically interconnect with an ILEC’s last-mile network, but rather connect at an aggregation point within the network. They therefore are not directly affected by, and do not need notice of, retirement of copper facilities in the last-mile network.

### **3. IT WOULD BE UNREASONABLE TO REQUIRE ILECS TO PROVIDE FORECASTS OF COPPER RETIREMENT.**

The *NPRM* also asks whether ILECs should be required to provide annual forecasts of expected copper retirements or other network changes.<sup>96</sup> They should not. An ILEC’s schedule for deploying fiber (and potentially retiring copper facilities) is very competitively sensitive information that, if disclosed, would enable cable providers and other competitors to preempt the ILEC’s market launch with their own network upgrades and retention promotions to blunt the effectiveness of the ILEC’s initiative. Disclosure of this information would thus cause significant competitive harm to ILECs and discourage them from upgrading their networks, thereby reducing choices for end users.

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<sup>95</sup> See *id.*, App. A, Proposed Rule 51.332(b)(2).

<sup>96</sup> See *id.* ¶ 57.

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**C. The Commission Should Not Extend Its Copper Retirement Rules to Retail Customers.**

While well intentioned, the Commission should reject the *NPRM*'s proposal to extend its copper retirement rules to retail customers. Those rules were designed for a different purpose, based on a statutory provision governing interactions between interconnecting carriers. Of most concern, the Commission should not adopt rules to hinder “upselling,” which would delay the IP transition and raise First Amendment concerns.<sup>97</sup>

**1. THE COMMISSION’S AUTHORITY TO REQUIRE NOTIFICATION TO CONSUMERS UNDER SECTION 251(C)(5) IS HIGHLY QUESTIONABLE.**

Section 251(c)(5) requires ILECs to “provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier’s facilities or networks, as well as of any other changes that would affect the interoperability of those facilities or networks.”<sup>98</sup> In both the *Local Competition Second Report and Order* and the *Triennial Review Order*, the Commission interpreted this provision as requiring notice only to interconnecting competitors.<sup>99</sup> Thus, before extending Section 251(c)(5) notification requirements to retail customers, the Commission would have to revise its long-standing interpretation of that statutory provision.

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<sup>97</sup> The Commission also should not require ILECs to maintain records of such customer notifications. *See id.* ¶ 64. Such a requirement would be exceedingly burdensome given that the retirement of copper plant in just one area could impact tens of thousands, if not hundreds of thousands, of retail customers.

<sup>98</sup> 47 U.S.C. § 251(c)(5).

<sup>99</sup> *See Second Local Competition Order*, 11 FCC Rcd at 19471 ¶ 171 (“Section 251(c)(5) requires that information about network changes must be disclosed if it affects competing service providers’ performance or ability to provide service.”); *Triennial Review Order*, 18 FCC Rcd at 17147 ¶ 281 (notifications of copper retirement “will ensure that incumbent and competitive carriers can work together to ensure the competitive LECs maintain access to loop facilities”).

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As the Commission has explained, the purpose of the disclosures required by Section 251(c)(5) is solely to “promote[] open and vigorous competition contemplated by the 1996 Act.”<sup>100</sup> Thus, Section 251(c)(5)’s operative language requires public notice of “changes in the information necessary for the transmission and routing of services” and “changes that would affect the interoperability of [the ILEC’s] facilities or networks”— information that clearly affects interconnecting providers rather than retail customers.<sup>101</sup> Further, Section 251(c)(5)’s placement in Section 251, which is titled “Interconnection,” and specifies the duties interconnecting carriers’ owe to each other, further suggests that its reach is limited to interactions between interconnecting carriers. Indeed, the plain language of Section 251(c)(5) and its placement within Section 251 (which addresses interconnection, not retail service) explain why, in initiating its efforts to implement the Act nearly twenty years ago, the Commission *never even contemplated* notice to retail customers.<sup>102</sup> Reliance on Section 251(c)(5) for requirements for ILECs to notify retail customers of copper retirements therefore appears to be highly questionable.

### **2. THE COMMISSION’S COPPER RETIREMENT RULES ARE ILL-SUITED TO AND UNNECESSARY FOR RETAIL CUSTOMERS.**

Given their genesis in the interconnection statute, it is not surprising that the Commission’s copper retirement rules are ill-suited for ensuring that retail customers receive

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<sup>100</sup> *Second Local Competition Order*, 11 FCC Rcd at 19471 ¶ 171.

<sup>101</sup> *See id.* at 19404, ¶ 17 (“We conclude that ‘information necessary for transmission and routing’ in section 251(c)(5) means any information in the [ILEC’s] possession that affects a competing service provider’s performance or ability to provide either information or telecommunications services. We define ‘interoperability’ as the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged.”).

<sup>102</sup> *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 11 FCC Rcd 14171, 14235-37 ¶¶ 189-194 (1996).

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appropriate notice of network upgrades affecting them. Under those rules, an ILEC must provide public notice for any network change that will result in the retirement of a copper loop or subloop and the replacement of such loop or subloop with an FTTH or FTTC loop.<sup>103</sup> Thus, the transition of a customer’s service from a copper loop to a fiber loop does not trigger a disclosure obligation under the current copper retirement rules, unless the copper loop is being removed from service.

It is unclear whether the Commission intends to broaden the scope of the copper retirement rules to cover situations where a copper loop (or subloop) is “replaced” by a FTTH or FTTC loop, but the copper loop (or subloop) remains in service, given the inconsistent definitions of “copper retirement” in the *NPRM* and proposed rules. Under the *NPRM*’s proposed definition,<sup>104</sup> copper retirement would occur only if the copper loop (or subloop) is removed or disabled. In CenturyLink’s network this currently does not typically occur when a customer is switched to a brownfield FTTH or FTTC loop. Thus, the ILEC would not be required to disclose this change to an affected retail customer served on that loop or to any affected interconnecting carriers. But the definition of copper retirement in the proposed rules would lead to a different result: if a copper loop (or subloop) was replaced by a FTTH or FTTC loop, the ILEC would have to disclose this network change to both affected retail customers and interconnecting carriers. Whether intentional or not,<sup>105</sup> these differing definitions of copper retirement illustrate the fact that a network change that is material to a retail customer (*i.e.*, the

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<sup>103</sup> See 47 C.F.R. § 51.325

<sup>104</sup> See *NPRM* ¶ 52.

<sup>105</sup> It is possible that the definition in Proposed Rule 51.332 reflects a typographical error, as it mirrors the current definition of copper retirement in 47 C.F.R. § 51.325(a)(4), except that the phrase “the replacement of such loops with fiber-to-the-home loops or fiber-to-the curb loops” is preceded with an “or,” rather than an “and.”

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transition of service from a copper facility to a fiber facility) is not necessarily material to an interconnecting carrier, and vice versa.

Regulatory mandates to notify affected retail customers of a change in the network facilities used to serve them are also unnecessary. Communications networks have constantly evolved over time, with constant improvements in the facilities and technologies used to serve retail customers. Notably, those countless upgrades have occurred over the decades without a Commission rule requiring ILECs (or competing providers) to notify affected customers.

There is no reason to think such a requirement is needed today. Given the huge capital investment required for fiber overbuilds, and the new and advanced services that can be provided over fiber facilities, ILECs possess strong incentives to notify affected retail customers of a transition from copper to fiber. Intense competition from cable, wireless and CLEC competitors give ILECs further motivation to ensure that their retail customers are adequately informed and educated about network upgrades that might require new or modified CPE or will negatively affect them. As noted, given these considerations and its contractual commitments, CenturyLink already has in place a multi-step process to notify affected retail customers of an upcoming transition from copper to fiber facilities. For all these reasons, the Commission's proposed retail notification requirements are superfluous and unnecessary.

**D. Rules Designed to Hinder “Upselling” Will Delay Fiber Deployment and the IP Transition and Run Afoul of the First Amendment.**

The *NPRM* proposes that ILECs be required to advise retail customers who might be affected by copper retirements that the customer “will still be able to purchase the existing service(s) to which he or she subscribes with the same functionalities and features as the service

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he or she currently purchases” if that statement is accurate.<sup>106</sup> If the statement would not be accurate, the ILEC would be required “to include a statement identifying any changes to the service(s) and the functionality and features thereof.<sup>107</sup> The *NPRM* further proposes to require ILECs—but not their competitors—to supply “a neutral statement of the various choices that the ILEC makes available to retail customers affected by the planned network change.”<sup>108</sup> In addition to raising competitive parity concerns, both requirements implicate carriers’ First Amendment rights because the proposals compel content, create a situation where a carrier might be required to speak when it would otherwise choose not to, and likely cannot be demonstrated to be legally sustainable.

Of course, there is no excuse for a provider to misrepresent or otherwise intentionally mislead a consumer into thinking that an existing service will no longer be available when it will be, or that he or she *must* buy an upgraded service or package of services if that is not true. But the Commission’s enforcement process, as well as consumer education efforts that will be undertaken by both the Commission and service providers, are well equipped to address these speculative concerns.

The *NPRM*’s proposals raise significant legal and policy concerns. *First*, the *NPRM*’s communication proposals would apply only to ILECs, placing them at a competitive disadvantage as they try to market new services and functionalities to retail customers who will be migrating from copper to fiber facilities. Even if such compelled communications were sound

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<sup>106</sup> *NPRM* ¶ 65 (referring to “Content” of the required message), & App. A, Proposed Rule 51.332(c)(2).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* ¶ 72. This proposal is based on Public Knowledge’s and NASUCA’s concerns that ILECs “*may* take advantage of copper retirements to ‘upsell’ subscribers.” *See id.* ¶ 71 (emphasis added).

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as a matter of law and policy (which CenturyLink does not believe they are), there is no logical basis to suggest that consumers are more likely to be harmed by ILECs than by CLECs or cable and wireless providers with whom ILECs compete on a daily basis.

*Second*, the “forced speech” inherent in these proposed statements implicates the First Amendment to the Constitution.<sup>109</sup> There is no doubt that the First Amendment applies to the compelled communications proposed in the *NPRM*: it establishes a disclosure mandate and dictates not only the form but also the content of such communication.<sup>110</sup> And, as made clear above, given that companies like CenturyLink undoubtedly already make disclosures to customers about their networks and the effect of changes to those networks on customers’ products and services, there already exist “less restrictive approaches” to such government-mandated speech. Indeed, in another context, the Commission has recognized that the First Amendment generally requires that providers be given flexibility in how they communicate with their customers, and that government entities should not be dictating the content of such speech.<sup>111</sup>

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<sup>109</sup> While it does not mention the First Amendment by name, the *NPRM* acknowledges its relevance when it seeks comment on whether certain disclosure proposals in the *NPRM* would advance “important government interests,” and whether any other “less restrictive approaches” would accomplish the Commission’s desired goals. *NPRM* ¶¶ 69, 73, 75.

<sup>110</sup> *See id.* ¶ 63 (Form), ¶ 65 (content requirement to “state clearly and prominently that a retail customer ‘will still be able to purchase the existing service(s) to which he or she subscribers with the same functionalities and features as the services he or she currently purchases’”), *id.* at ¶ 72 (content requirement that ILECs “supply a neutral statement of the various choices that the LEC makes available to retail customers affected by the planned network change”).

<sup>111</sup> *See Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7530 ¶ 60 (1999) (explaining that proposed labels regarding charges related to federal regulatory actions would be consistent with the First Amendment because “we have not mandated or limited specific language that carriers utilize to describe the nature and purpose of these charges; each carrier may develop its own language to describe these charges in detail”); *id.* at 7532 ¶ 63 (“Our standardized label requirement is even less onerous, requiring carriers to use the labels, but otherwise leaving them free to determine

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*Third*, the rationale behind the *NPRM*'s proposed government-compelled speech is flawed. The *NPRM* reflects a concern about ILECs possibly trying to “upsell” their customers when they are in the process of modifying their networks or retiring their copper facilities. The *NPRM* contains no discussion, however, of the fact that upselling is not unlawful (despite the fact that the term is almost always used in a pejorative sense). Indeed, customers of service providers are not generally unwitting or uneducated in terms of what communications services or packages promote their economic and personal needs. And they may find that spending additional dollars provides them increased functionality and satisfaction with their purchases. New fiber networks will not only increase customers' choices, but strengthen the economic foundation of their service provider. Accordingly, government-compelled communications to customers that are crafted to stress some theoretical benefit of maintaining or replicating the *status quo* could undermine the already-tenuous business case for fiber overbuild in many areas. They would also undercut Commission policy seeking to ensure that all Americans have access to a minimum level of broadband service, now defined as 25 Mbps downstream and 3 Mbps upstream.<sup>112</sup> It would be inconsistent for the Commission to insist that “25 Mbps downstream is necessary to provide all households the *advanced* services Congress identified: high-quality voice, data, graphics, and video,”<sup>113</sup> while simultaneously chastising providers for urging customers to upgrade to those speeds. Indeed such communications could deny consumers the

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how best to describe charges related to federal regulatory action in a truthful and nonmisleading manner.”).

<sup>112</sup> See *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*, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, FCC 15-10, GN Docket No. 14-126 (rel. Feb. 4, 2015).

<sup>113</sup> *Id.* ¶ 33.

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very benefits that these upgraded networks can deliver to them. There is no basis in fact or law to create this tension.

Under *Central Hudson*,<sup>114</sup> regulation of commercial speech will be found compatible with the First Amendment if and only if: (1) there is a substantial government interest, (2) the regulation directly advances that interest, and (3) the proposed regulation is not more extensive than necessary to serve that interest.<sup>115</sup> The Supreme Court has made clear that disclosure requirements trigger First Amendment scrutiny every bit as much as prohibitions on speech, opining that the difference between compelled speech and compelled silence is “without constitutional significance, for the First Amendment guarantees ‘freedom of speech,’ a term necessarily comprising the decision of both what to say and what *not* to say.”<sup>116</sup> The Court has also rejected any distinction between “compelled statements of opinion” and “compelled statements of ‘fact’” – “either form of compulsion burdens protected speech.”<sup>117</sup>

Accordingly, government mandates compelling specific speech by specific service providers must pass First Amendment review. The Supreme Court, however, has never upheld the constitutionality of a governmentally-imposed disclosure requirement in the absence of evidence that the regulation was reasonably necessary to address a potential problem.<sup>118</sup>

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<sup>114</sup> *Central Hudson Gas & Elec. Corp. v. Public Service Comm’n*, 447 U.S. 557, 566 (1980).

<sup>115</sup> Given that the *NPRM*’s proposals are expressly “content” related, a standard of review more rigorous than that required by *Central Hudson* could be argued as required (*i.e.*, strict scrutiny).

<sup>116</sup> *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 796-97 (1988).

<sup>117</sup> *Id.* at 797-98.

<sup>118</sup> In *Riley v. National Fed’n of the Blind of N.C., Inc.*, the Supreme Court invalidated a mandatory disclosure provision that required professional fundraisers to disclose to potential donors the percentage of charitable contributions collected during the preceding year that were actually given to the charities for whom the fundraisers worked, even though certain donors might have an abstract interest in learning such information. In *Ibanez v. Fla. Dept. of Bus. and Professional Regulation*, 512 U.S. 136 (1994), the Court invalidated the punishment of a Certified Financial Planner (CFP) under a state rule requiring CFPs to disclose in their

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In short, mandated information-disclosure requirements are unconstitutional in the absence of a documented governmental justification. “The First Amendment does not permit a remedy broader than that which is necessary to prevent deception, or correct the effects of past deception.”<sup>119</sup> But, as noted above, there have been only anecdotal allegations about customers being misinformed that a retirement of copper requires them to switch to more expensive services or packages of services—allegations which the ILECs in question deny. And mandates that ILECs tell customers that they can keep their existing service are likely to be confusing to customers, who might understand such communications to suggest that they *should* do so, even if the customers would be better served by pursuing different options. At least at this point, there is no factual predicate for the proposed mandated disclosures, and a compelled speech requirement would be unconstitutional.<sup>120</sup>

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advertisements that CFP status was conferred by an unofficial private organization. The Court explained that the State’s “concern about the possibility of deception in hypothetical cases is not sufficient” and demanded actual evidence of harm. (“Neither the witnesses, nor the Board in its submissions to this Court, offered evidence that any member of the public has been misled” in the absence of the disclosure.). “Given the state of this record -- the failure of the Board to point to any harm that is potentially real, not purely hypothetical -- we are satisfied that the Board’s action is unjustified.” *Id.* at 146. *See also Doe v. Reed*, 561 U.S. 186 (2010) (affirming that disclosure requirements trigger First Amendment scrutiny); *Milavetz, Gallop & Milavetz, P.A. v. U.S.*, 559 U.S. 229, 250 (2010) (explaining that “[u]njustified or unduly burdensome disclosure requirements offend the First Amendment by chilling protected speech,” although upholding the particular disclosure rules at issue, based on review of the record showing that they were “intended to combat the problem of inherently misleading commercial advertisements”).

<sup>119</sup> *National Committee on Egg Nutrition v. FTC*, 570 F.2d 157, 164 (7th Cir. 1977); *see also Entm’t Software Ass’n v. Blagojevich*, 469 F.3d 641, 651-52 (7th Cir. 2006) (applying strict scrutiny to, and striking down, a statutory disclosure requirement).

<sup>120</sup> Moreover, none of the cases the Commission often relies on to support a government right to compel disclosures by businesses (specifically *Nat’l Elec. Mfrs. Ass’n v. Sorrell*, 272 F.3d 104 (2d Cir. 2001), *cert. denied*, 536 U.S. 905 (2002) and *New York State Restaurant Ass’n v. New York City Bd. of Health*, 556 F.3d 114 (2009)) supports such a government mandate. The issues the Commission is addressing (*i.e.*, copper retirements and service discontinuance) do not rise to the level of “protecting human health and the environment” (*Sorrell*) or public health (*NY State Restaurant Ass’n*). In any event, those cases misread *Zauderer v. Office of Disciplinary Counsel of the Supreme Court*, 471 U.S. 626, 651 (1985) as having created a “rational connection”

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**IV. RATHER THAN MANDATING BACKUP POWER, THE COMMISSION SHOULD ENDORSE THE CSRIC BEST PRACTICES AND PERMIT SERVICE PROVIDERS TO CRAFT MARKET RESPONSES.**

The *NPRM* observes that IP networks generally do not power the CPE that connects to them, in contrast with legacy TDM network architectures, in which electrical power was often supplied to a consumer’s CPE through central office connections. Even within a TDM network, though, CPE has long been viewed as distinct from the service provider’s network. The Commission unbundled and detariffed CPE in the 1980 *Second Computer Inquiry* decision.<sup>121</sup> In the 35 years since then, the Commission has pursued policies designed to ensure vigorous competition and a wide array of choices in CPE, and users of landline telephone service have looked *not* to their service providers but to third parties for their CPE. Even among customers who remain on legacy copper networks, many rely on cordless telephones with no copper connection to the handset and no backup power.<sup>122</sup> Indeed, millions of end users in the United States have chosen CPE that will not work during electrical outages if they have not secured

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(*Sorrell*, 272 F.3d at 115) or “rational basis” (*New York State Restaurant Ass’n*, 556 F.3d at 134-35) standard when, in fact, the word “rational” does not appear in the opinion. The Supreme Court’s subsequent reliance on *Zauderer* to strike down (under the *Central Hudson* test) a disclaimer requirement in *Ibanez v. Florida Dept. of Business and Professional Regulation* confirms that the Second Circuit erred reading *Zauderer* as establishing a “rational basis” test.

<sup>121</sup> *Amendment of Section 64.702 of the Commission’s Rules and Regulations*, 77 FCC2d 384, 438-47 ¶¶ 140-61 (1980), *recon.*, 84 FCC2d 50 (1980), *further recon.*, 88 FCC2d 512 (1981), *aff’d sub nom. Computer and Communications Industry Ass’n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

<sup>122</sup> *NPRM* ¶ 33 (querying how to account for power outages affecting such CPE). *See also* Letter from Thomas Cohen, Counsel for American Cable Association (“ACA”), to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5, at 2 n.1 (Nov. 17, 2014) (“*ACA Ex Parte*”) (noting that many residences have only cordless phones that cannot be used during power outages). Whether consumers realize that the battery in the handset of cordless phones only provides power to the handset but not the base station – with the consequence that the phone will not work in the event of a power outage – is questionable. To the best of CenturyLink’s knowledge, there are no point-of-sale disclosures. So if the matter is disclosed, likely it is in the literature provided to the customer, which many consumers would not bother to review.

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backup power (which many likely have not).<sup>123</sup> Obviously, then, the backup power issue does not stem directly from the retirement of copper networks or the conversion from TDM to IP networks. That said, backup power issues become increasingly important as IP networks and related CPE replace legacy offerings.<sup>124</sup>

There is a clear public benefit in promoting consumers' awareness that their CPE might not work if they have not taken affirmative action to acquire and maintain backup power, and electric power sources fail. Service providers such as CenturyLink share the Commission's concerns and are educating customers about this issue. Furthermore, self-regulatory best practices have been promulgated that not only address the CPE backup power issue, but also provide guidance to service providers, vendors and other stakeholders seeking to assist the consuming public. For the reasons below, promoting these best practices is preferable to federal regulatory mandates at this time.<sup>125</sup>

### **A. The Commission Should Endorse CSRIC's Recommended Best Practices.**

As the *NPRM* notes, “[t]he Communications Security, Reliability and Interoperability Council (CSRIC) recently issued recommendations for advancing the state of the art in CPE

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<sup>123</sup> As the *NPRM* notes, as of December, 2013, almost 48 million VoIP connections existed in the marketplace which “compris[ed] over a third of all wireline retail local telephone service connections;” and that “recent estimates suggest that 41 percent of American households rely exclusively on wireless services.” *NPRM* ¶ 9. In addition, again as of December 2013, “more than [31 million] end users were receiving voice service over coaxial cable.” *Id.* ¶ 13. *See also id.* at 15038 (Statement of Commissioner Pai: “Indeed more residential consumers now subscribe to interconnected VoIP than plain old telephone service.”).

<sup>124</sup> *See id.* ¶ 31 (noting that the retirement of copper networks “highlights a broader challenge facing consumers of any service that depends upon access to a residential power supply.”); *id.* at 15035 (Statement of Commissioner Clyburn: “[T]his is not just a copper retirement issue.”).

<sup>125</sup> Given the current competitive marketplace for communications services and CPE, the notion that voice service providers should be compelled by the government to become significantly insinuated into the electricity/power business with respect to maintaining CPE functionality seems anachronistic.

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powering.”<sup>126</sup> The best practices identified and recommended in the CSRIC Report<sup>127</sup> outline service-provider responsibilities in the context of CPE backup power. Accordingly, the Commission should forego formal rules at this time. Rather, it should endorse these best practices, monitor the industry’s response and progress, and then reassess whether further action is warranted.

The Commission-appointed CSRIC Advisory Committee has established Working Group 10, which is charged with addressing the fact that “[d]ifferent communications providers have different policies as it relates to powering these devices” and “recommend[ing] best practices for providing back-up power to VoIP customer premises equipment, including best practices for consumer notification.”<sup>128</sup> The working group’s efforts culminated in recommendations that call for service provider disclosures, customer education, and collaborative efforts between providers and consumers regarding backup power to CPE. These recommended best practices incorporate the following baseline requirements associated with CPE backup power matters, all of which the *NPRM* recognizes as desirable objectives:

- **Service provider disclosures to consumers about the limitations of service-provider CPE.** The Best Practices recommend that voice service providers provide customer education on the need for backup power suited to the specific network configuration and customer use associated with the service, as well as potential sources of such backup power (whether the source is an IP service provider, manufacturer or a retail outlet).<sup>129</sup>

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<sup>126</sup> *NPRM* ¶ 36.

<sup>127</sup> CSRIC IV Working Group 10B, CPE Powering – Best Practices; Final Report (Sept. 2014), <http://transition.fcc.gov/pshs/advisory/csric4/CSRIC%20WG10%20CPE%20Powering%20Best%20Practices%20Final%20Draft%20v2%20082014.pdf>.

<sup>128</sup> CSRIC IV Working Group Descriptions (Oct. 23, 2014), *available at* <http://transition.fcc.gov/bureaus/pshs/advisory/csric4/CSRIC%20IV%20Working%20Group%20Descriptions%2010%2023%2014.pdf>.

<sup>129</sup> *See, e.g.*, CSRIC Report at 13-14 & 20-21. In the future, CenturyLink intends to ask, in the first instance at the point-of-sale, whether customers want to secure backup power from CenturyLink. If they choose CenturyLink for their backup power needs, customers will be assessed a one-time, nonrecurring charge. CenturyLink does not intend to monitor the backup

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- **Information about where and how to secure backup power functionality for such CPE.**<sup>130</sup>
- **Service providers making available affordable options for battery backup power to consumers.** Such units should come with a battery backup power source, even if service providers will not be monitoring batteries or providing replacements over time.<sup>131</sup>

Rather than promulgating regulations, the Commission should endorse these recommendations as the appropriate starting point to address the complex issue of CPE backup power. The CSRIC Report articulates several useful best practices that service providers can adopt now, and recognizes that service providers must have flexibility to adopt and implement these practices due to differences in their networks and business models.

There is no evidence that regulatory mandates are needed: Service providers are increasingly communicating with customers about the issue of backup power and are sometimes providing backup power equipment, including batteries. CenturyLink, for example, created a

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battery power as our past experience demonstrates that our customers do not respond to warnings or notices about their batteries coming to the end of their lives. Nor does CenturyLink intend to be a source of replacement batteries beyond the first provisioning.

<sup>130</sup> See, e.g., CSRIC Report at 21-22 (New Best Practice Number 18). CenturyLink intends to provide information regarding sample batteries that would work with our equipment as well as suppliers of such equipment for those customers wishing to provide their own backup power (essentially “opting out” of CenturyLink’s provisioning). Our business model reflects that we support customers’ choices as to who they wish to provide their backup CPE power needs. See NPRM ¶ 37 (asking whether consumers should be able to opt-out). See also ACA *Ex Parte* at 3 (noting that “Consumers make . . . decisions based on many factors, including the likelihood of outages in their area, availability of alternative means of contacting 911 during outages, and the level of connectivity during an outage that the consumer needs and desires.”). And like ACA, CenturyLink has received no complaints from subscribers regarding its current practices.

<sup>131</sup> See, e.g., NPRM ¶ 38 (citing the CSRIC Report at 20-21). CenturyLink does not intend to maintain an inventory of batteries for replacement-battery purposes. Issues associated with limited shelf lives, as well as the general availability of batteries in the retail marketplace, factored into this decision.

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brochure when it entered the Omaha market with FTTH<sup>132</sup> and supplemented it with information on the company’s website.<sup>133</sup> Additionally, CenturyLink provided customers with backup power units and supplied information about the units and the ongoing need for backup power support.<sup>134</sup>

By adopting CSRIC’s best practices as the “baseline requirements”<sup>135</sup> for service providers, vendors and customers, the Commission can achieve the objectives outlined in the *NPRM* with a light touch rather than a more severe interventionist approach. Should the Commission deem it necessary, it could “monitor whether the CSRIC best practices or any additional measures are being followed”<sup>136</sup> before taking action to promulgate any future rules in this area. If these monitoring efforts indicate that self-regulation is failing to live up to the public interest objectives the Commission hopes to achieve, the Commission should revisit this issue at that time.

**B. IP Service Providers Are Not CPE Suppliers But Offerors Of Services.**

Another compelling reason to rely on self-regulation as the preferred approach to the matter of CPE backup battery power is that IP service providers are in the business of providing IP *services*, not in the business of providing CPE as a separate commodity. By recognizing that

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<sup>132</sup> In so doing, CenturyLink advised customers of the importance of maintaining battery power (particularly with respect to 911 access), provided the names of the suppliers of the CenturyLink-provided batteries, cautioned that most batteries would last about three years, and noted that there was a visual indicator on the battery unit to indicate when it needed to be replaced. CenturyLink also provided information about other battery backup suppliers and their websites for replacement battery purposes.

<sup>133</sup> See CenturyLink, *Battery Backup Unit*, available at <http://qc.centurylink.com/customerService/batteryBackUp/index.html>.

<sup>134</sup> During the Omaha trial, CenturyLink provided both an Optical Network Terminal (“ONT”) as well as a battery backup unit for inside the home.

<sup>135</sup> See *NPRM* ¶ 32.

<sup>136</sup> *Id.* ¶ 46.

service providers have no advantage in the provision of backup power, and no unique obligation to provision backup power, the Commission will facilitate competition among CPE providers, carriers, and others and allow consumers to guide the development of the backup power marketplace. As described above, consumer preferences are evolving as IP and mobile offerings supplant legacy, line-powered ILEC services. Just as the Commission promoted CPE competition in decades past, it should promote continued development of the distinct backup power marketplace, recognizing that consumers are the best judges of the features they need and the value of those features. By focusing on education and facilitating competition, the Commission can ensure that consumers continue to receive the very best offerings that technology permits.

**V. CONCLUSION**

For the reasons described above, the Commission should maintain a balanced approach that protects the interests of consumers without inhibiting investment and deployment, recognizes the state of the marketplace as it has evolved, and avoids impositions on carriers' First Amendment rights.

Respectfully submitted,

CENTURYLINK



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February 5, 2015

# **Exhibit A**

**From:** Boudhaouia, Abdennaceur Jamal  
**Sent:** Monday, July 14, 2014 4:38 PM  
**To:** Fisher, Jennifer K  
**Cc:** Green, Matt O  
**Subject:** TEKSTAR Circuits affected by Copper Retirements

Jennifer:

Due to road construction, CenturyLink will be replacing the copper with fiber and therefore the following circuits will not be supported after October 19, 2014:

Circuit ID	Service Type	Phone Nbr	Cable	Pair	Impacted Address
3 /LXFU/232729 /NW	u23wx	(218) 723-5877	3	576	16482 LONGVIEW DR
3 /LXFU/232740 /NW	u23wx	(218) 723-5875	5	524	16482 LONGVIEW DR

Please make sure they are aware of this Copper Retirement and the fact we can no longer support copper loops after October 19, 2014.

Best Regards,

**Jamal Boudhaouia**

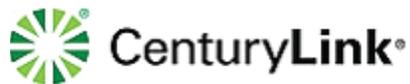
Regulatory Operations Director

700 W. Mineral Ave., Littleton, CO, 80120

Mailstop: 235106MN00-F19.16

tel: 303.707.8561 cell: 720.300.6388 fax: 303.707.9577

[jamal.boudhaouia@centurylink.com](mailto:jamal.boudhaouia@centurylink.com)



## **Exhibit B**

**Omaha Locate and Bury—POSTCARD (v8)**

*One version for customers and neighbors*

Agency will add graphics, logo and other brand compliant elements.

**High-Speed Internet and TV Services UPGRADE  
Coming Soon to Your Neighborhood!!  
ACTION REQUIRED: Access to Your Yard Is Needed!**

To our CenturyLink Customers and Omaha Neighbors: Network upgrades are scheduled to take place in your neighborhood beginning in **October 2012**.

Please be aware that trained Service Representatives will be in your neighborhood between **10/1 and 10/13** to locate existing cables in the ground and replace them with new, upgraded network fibers. **These upgrades will allow CenturyLink to provide you with High-Speed Internet (HSI) services with faster download speeds than our current cable-ready Internet access services.** In addition, CenturyLink will be able to bring you advanced TV services in the very near future.

- **CenturyLink Customers:** Locate Service Representatives and CenturyLink Representatives will need access to the facilities in your yard.
- **Omaha Neighbors:** Locate Service Representatives and CenturyLink Representatives *may* need access to your yard in order to access our customers' facilities.

**Please watch carefully for a letter from CenturyLink with more details about the initial phase of this project, which includes identifying, marking and, where necessary, placing fiber equipment to prepare the upgraded network for your neighborhood.**

**ACTION NEEDED:** If you have circumstances which might prevent the technician from gaining access to the CenturyLink facilities in your yard, such as a gate / fence or a dog, please contact us at **(877) 299-0217** between the hours of 8am and 9pm (CT) Monday through Friday or 9am and 4pm (CT) on Saturday. One of our customer service representatives will help make special arrangements with you.

# **Exhibit C**



**Your CenturyLink Service is Being Upgraded  
Interruption of Voice Service—Action May Be Required!**

August 6, 2013

Dear CLEC

Our goal at CenturyLink is to offer products that meet your communications needs and to provide timely information regarding changes or events that will affect your service.

Over the past few months, CenturyLink has been upgrading its network to provide state-of-the-art High-Speed Internet (HSI) enabling the fastest download speeds in Omaha (speeds faster than 50 MB). As we continue preparations for the service upgrades, the next action will require a temporary interruption in your end user's voice service.

This work will occur beginning on the cut dates listed below and will interrupt your end user's voice service until the network upgrade is complete. This could take up to 4 hours. (Your end user does not need to be home for this appointment.)

To minimize the out of service time your end user might experience, please make sure your end user has had all of the required appointments completed prior to their designated cut date listed below. This includes Locate & Bury and Inside Wiring appointments (described immediately below). If these appointments have not yet been completed, your end user could experience out of service times on the voice service of up to 24 hours. Therefore, please contact your service manager with your preference for the appointment day and time.

**Locate & Bury visit**

- During the first visit, the Locate Service Representative will locate the existing cable in the ground and mark the ground accordingly for the new, high-capacity fiber upgrade.
- A CenturyLink representative will return a few days later to place fiber equipment, if necessary. At this time, a new Network Interface box will be mounted on the outside of your end user's home to accommodate the upgraded services.
- All of this work will be provided at no cost to you.

**Inside Wiring appointment**

- As part of the upgrade, a trained Service Representative must make changes to the outside Network Interface that provides voice to your end user.
- An adult, at least 18 years of age, will need to be home to let the Service Representative into your end user's home.
- All of this work will be provided at no cost to you.

If the appointments above have been completed, there is no action required of you at this time. We just want you to be aware your end user's voice service will be interrupted for up to four hours beginning on their designated cut date.



**CUT DATE 9/23/2013**

End User BTN/WTN: TN  
End User Name: Name  
End User Address: Address

**Important:** Please contact your Service Manager with any questions as soon as possible.

We work hard at CenturyLink to avoid such situations because they can create an inconvenience for our customers. I understand that you have a choice of communications providers and appreciate that you have chosen CenturyLink.

*We value your business and thank you for being a CenturyLink customer.*

Sincerely,  
Ken Beck  
Regional Vice President, Wholesale Markets

## **Exhibit D**



P.O. Box 2618  
Omaha, NE 68103-2618



QSMT26-E00001  
TEST AF LETTER TYPE  
10700 KIMBLEWYCK CIR  
APT 110  
NORTHGLENN CO 80233

**We're upgrading CenturyLink® High-Speed Internet in your neighborhood.  
Please read and save this notice for future reference.**

TEST AF LETTER TYPE

CenturyLink will be upgrading our High-Speed Internet (HSI) network in your neighborhood on 12/27/11 between 8 a.m. and 5 p.m. Once the upgrade is done, faster Internet speeds may become available to you.

**This upgrade does not require you to take any action or make changes to your High-Speed Internet service.**

**IMPORTANT TO KNOW:**

- On the day of the upgrade, you might experience an interruption of your High-Speed Internet and phone services lasting up to 30 minutes. If the interruption lasts longer than 30 minutes, please call our Service Support Center at 1 888-777-9569 for assistance.
- If you also have CenturyLink phone service, or use your High-Speed Internet service for Voice over IP (VoIP) Internet-based calling, please be aware that you will not be able to receive or place calls, including calls to 911, during the interruption period. Your calling services will be restored immediately upon completion of the upgrade.
- Once your High-Speed Internet upgrade is complete, your next CenturyLink bill will show that a service change took place, at no cost to you. Your current high-speed Internet monthly rate will remain unchanged, unless of course, you have requested another change to your high-speed Internet service or its speed that would affect your monthly rate.

If you have any questions about this service upgrade, or if you would like to find out about the new CenturyLink High-Speed Internet speed options that will be available in your area, please contact us at 1 800-764-9504, between 8 a.m. to 5 p.m. PST Monday through Friday.

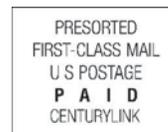
Thank you for choosing CenturyLink. We appreciate your business.



# **Exhibit E**



P.O. Box 2618  
Omaha, NE 68103-2618



Q.SMT 26-E00002  
TEST BF LETTER TYPE  
PO BOX 7396  
E RUTHERFORD NJ 7073

**ACTION REQUIRED BY 01/03/12**

**We're upgrading CenturyLink® High-Speed Internet in your area.**

**Please read this notice immediately and save it for future reference.**

Good news! We will be upgrading the CenturyLink High-Speed Internet service in your neighborhood on 01/10/12 between 8 a.m. and 5 p.m. You may qualify for faster speeds; contact our representative for more information.

**ACTION REQUIRED: Your current modem will not be compatible with this upgrade. CenturyLink will provide a replacement modem at no cost to you. You have two options:**

**1. Self-Installation:** If you want to install the new modem yourself, you do not need to respond to this notice. CenturyLink will ship a new modem via UPS to your service address before 01/10/12. If you want it delivered to a different address, or if you want to be present to sign for the delivery, contact us before 01/03/12 at 1 800-764-9504 between 8 a.m. to 5 p.m. PST Monday – Friday.

**2. Complimentary Technician Installation:** If you would rather have a CenturyLink technician install your modem, please call us at 1 800-764-9504 before 01/03/12 to set up a time that you can be present for the installation. The technician will bring your modem and install it, at no cost to you.

To install your modem, just follow the installation guide included in the modem kit. To avoid any interruption in service, please be sure your new modem is installed before 01/10/12. For assistance, please call our Service Support Center at 1 888-777-9569.

**IMPORTANT TO KNOW:**

- On the day of the upgrade, you might experience an interruption of your high-speed Internet and phone services lasting up to 30 minutes. If the interruption lasts longer than 30 minutes, please call our Service Support Center at 1 888-777-9569 for assistance.
- If you also have CenturyLink phone service, or use your High-Speed Internet service for Voice over IP (VoIP) Internet-based calling, please be aware that you will not be able to receive or place calls, including calls to 911, during the interruption period. Your calling services will be restored immediately as soon as the upgrade is complete.
- If your account is on Seasonal Service when this upgrade takes place, your high-speed Internet service will be upgraded, and the replacement modem will be shipped to you when Seasonal Service is removed and you reinstate your service.
- Once your high-speed Internet upgrade is complete, your next CenturyLink bill will show that a service change took place. Your current high-speed Internet monthly rate will not change, unless of course, you have requested another change to your high-speed Internet service that would affect your monthly rate.

If you have any questions about this service upgrade, or if you would like to find out about the new CenturyLink High-Speed Internet speeds that will be available in your area, please contact us at 1 800-764-9504, between 8 a.m. to 5 p.m. PST Monday through Friday.

We appreciate your business and value you as a CenturyLink customer.



# **Exhibit F**

## Omaha Customers and Neighbors

### Frequently Asked Questions Related to Locate and Bury Phase of High-Speed Internet and TV Services Upgrade

#### SECTION I: ANTICIPATED SERVICE-RELATED QUESTIONS

**Q: Will my service be interrupted during the locate and bury process?**

**A:** No, you will not experience any interruption of service during the locate and bury portion of this network upgrade.

**Q: When in 2013 will the new High-Speed Internet and expanded TV services be available to me?**

**A:** In early 2013 we will start a phased deployment in Omaha. You will receive more information in the mail specific to your address closer to the installation timeframe.

**Q: What makes these services better than CenturyLink's existing High-Speed Internet and cable-based TV services?**

**A:** The upgrade from cable to a fiber-optics network will provide state-of-the art High-Speed Internet (HSI) services with the fastest speeds in Omaha (speeds faster than 50 MB), as well as a technologically advanced TV service to your neighborhood.

**Q: What more can you tell me about the new, upgraded/expanded services?**

**A:** The upgraded network, bringing fiber optics into your neighborhood, will dramatically increase the capacity of your existing connection. CenturyLink's technologically advanced TV services will offer a state-of-the-art way for you to experience home entertainment, including television, games, interactive dashboards, personal media sharing and on demand content.

The emerging technology will allow you to enjoy more products and services that will enhance your entire Internet and video experience.

**Q: Can I keep my existing services? Choice TV and Online?**

**A:** Yes, but for a short timeframe only as we will be migrating all existing customers to our state-of-the-art network, allowing them to experience the best in data and video services. In early 2014, Choice TV and Online will be phased out.

**Q: Where will you be placing the new small box on my home and how will you attach it to my house? What if it is brick or sided?**

**A:** The new small outside enclosure will be placed adjacent to the existing box on your home for CenturyLink services. The CTL representatives will utilize the appropriate hardware to attach this to the side of your home, regardless of whether it is brick or sided. At the time of the placement, if you are at home, the installation tech will review the process prior to starting any work.



**Q: Can you add me to a reservation list to notify me when the new services become available in my neighborhood?**

**A:** Yes. Call (402) 691-1600 between the hours of 8 am and 9 pm (CT) Monday through Friday or 9am and 4pm (CT) on Saturday. One of our customer service representatives will make arrangements for you to be contacted in advance of the new services becoming available to you.

**SECTION II: GENERAL QUESTIONS OR CONCERNS**

**Q: How invasive is the burying of the conduit or fiber? How quickly will the ground be covered?**

**A:** Using equipment about the size of a lawnmower, a CenturyLink representative will cut a narrow (<1" wide by 6" deep) slit in the ground to bury a new fiber and then cover it immediately.

Before...



After...



**Q: How long will the locate service technicians need access to my yard?**

**A:** There will be multiple utility technicians visiting your property to locate the facilities serving your home.

**Q: How long will the CTL service techs need access to my yard?**

**A:** The typical timeframe to complete the placement of new facilities\* is 2 hours.

*\*Facilities = pedestal where cables are located*

**Q: Will I incur any expenses related to the potential work being done in my yard?**

**A:** CenturyLink will absorb all costs related to the work described below:

*The Representative will identify the existing cable in the ground and mark it accordingly. Within a few days, a CenturyLink representative will return to cut a narrow (<1" wide by 6" deep) slit in the ground, using equipment about the size of a lawnmower, to bury a new fiber and then cover the ground immediately.*

**Q: What if a customer/non customer calls to check on status of contractor arrival?**

**A:** The migration database does not track this level of detail. The two week window identified in the post card/letter is valid. If the customer has arrangements to make for access (gate, fence, dog, etc) they can call Center Partners at (402) 691-1600 and make the arrangements. The exact locate date will not be known. The migration database will have a flag for the locate being completed which will trigger the ability for us to specifically know the bury date.

**Q: How much room is there to move or adjust the trenching line? In other words, what if the trenching is in my flower bed?**

**A:** Every effort will be made to minimize impact to your landscaping. The goal is to leave your property in the same condition as it was when we arrived.

**Q; What if special arrangements were made and a CenturyLink representative did not show up—what is the escalation path to check status?**

**A:** If the schedule has to be changed due to unforeseen circumstances or weather, every effort will be made to proactively contact you before your appointment to reschedule using your Can Be Reached (CBR) number. In the unlikely event that we miss your appointment, please call (402) 691-1600 between the hours of 8am and 9pm (CT) Monday through Friday or 9am and 4pm (CT) on Saturday. One of our customer service representatives will work with you to reschedule.

**Q: What if I have an invisible dog fence, sprinklers or other property buried less than 6 inches deep? How can I be sure my property will not be damaged during the locate and bury work?**

**A:** Please be sure to mark or identify your property accordingly where any of these items might exist so the representatives will be aware and try to avoid that area.

**SECTION III: ANTICIPATED WEATHER-RELATED QUESTIONS OR CONCERNS:**

**Q: What if the weather interferes with the communicated locate and bury schedule?**

**A:** The customer should not be impacted by a freeze. A team will determine the frost date 2 weeks in advance of initial project completion date.

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**GENERAL INFORMATION**

**Please call (402) 691.1600**

Hours of operation: 8am – 9am (CT) Monday through Friday or 9am – 4pm (CT) on Saturday