

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
)	

REPLY COMMENTS OF CENTURYLINK

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EXECUTIVE SUMMARY

The goal of this proceeding should be to facilitate the technological migration from legacy copper-based telephone networks to all-purpose fiber networks and to thereby ensure that ILECs can provide a meaningful competitive alternative to high-speed cable networks. Some commenters, however, appear to believe that the Commission should instead freeze this transition to ensure that the characteristics of traditional telephony are precisely replicated and remain available forever, irrespective of the impact on the IP transition or the wishes of consumers. The new entitlements these commenters seek would impede the deployment of new facilities and the development of facilities-based competition in the provision of high-speed services, and therefore must be rejected.

Section 214 Discontinuance Rules. CLECs ask the Commission to enact a massive, paralyzing wholesale access regime that would cripple the IP transition. They propose burdensome filing requirements for any change in services that might be used by another carrier, buttressed by un rebuttable presumptions and obligations that would severely hamper ILECs' efforts to upgrade their networks. Section 214 should not be distorted to protect a specific subset of competitors to the detriment of consumers clamoring for new IP-based and wireless services.

The proposed presumption that cessation of a service used as an input by CLECs will "discontinue, reduce, or impair" service to the CLECs' retail customers has no legal basis and is contrary to the reality of today's competitive telecommunications market. Indeed, sales of the DSn services at issue have cratered. Meanwhile, CLEC executives boast to Wall Street of their robust fiber networks and their ability to compete with ILECs for multi-location enterprise customers, with or without access to ILEC legacy services. Nevertheless, some commenters support a presumption that every discontinuance of a wholesale service results in a retail discontinuance and thus requires approval under Section 214. Some would make that presumption *conclusive* in a wide range of situations, while others seek elaborate notice and filing requirements wherever an ILEC seeks to rebut the presumption. In either case, these proposals would contravene decades of Commission precedent limiting the scope of Section 214 to the discontinuance of retail services and rejecting its application in the context of service upgrades or where a party would be forced to maintain two parallel sets of service offerings.

Neither Section 214 nor any other provision of the Communications Act authorizes a requirement that ILECs offer CLECs equivalent wholesale access at identical rates, terms and conditions when upgrading and replacing a legacy service. Section 214 also does not authorize the hodge-podge of replacement service criteria proposed by the CLECs and other commenters. Given the cornucopia of alternative services provided via other technologies, there is no reason to expect that a substitute service be an exact replica of a discontinued ILEC legacy service that consumers are fleeing, and there is nothing in the Act or sound broadband policy that would authorize the Commission to mandate such replication by regulation.

CLECs stray even farther from the scope of Section 214 with respect to tariff discount plans – specifically proposing a presumption that the mere elimination of a tariffed discount plan, with no cessation of service, results in discontinuance that is only permissible if the ILEC can show that the change does not impair service or threaten competition. The courts and the Commission, however, have held that Section 214 cannot be applied to govern rates, terms or

conditions of service. Moreover, under the tariff filing provisions of Sections 203-205 of the Act, the Commission may not impose any prerequisites or require special permission to file a tariff, whether directly or indirectly. Thus, there is no other provision of the Act that could authorize the proposed procedures addressing the elimination of a tariffed discount plan.

Copper Loop Retirement Rules. The Commission also should recognize that the existing copper retirement process has generally been working well, and that no party has identified any significant problem with it. Many commenters have submitted extensive wish-lists stocked with significant and burdensome changes that would effectively convert a notice procedure into a drawn-out approval process akin to Section 214's discontinuance regime. These commenters call for expansive notice periods (in some cases, one year or longer), a substitute facilities unbundling requirement, moratoriums on copper retirement, and even an explicit full-fledged copper retirement approval process. The Commission has already decided in the NPRM, however, that it does not intend to convert the copper retirement notice process into an approval process, finding – correctly – that the latter would harm incentives for fiber deployment.

Even without a formal *approval* process, the onerous copper retirement notice mandates proposed by some commenters would unreasonably burden ILECs' ability to manage and upgrade their networks, thereby thwarting the Commission's broadband deployment goals. For example, ILECs cannot be expected to predict the impact of planned copper retirement on CLEC service offerings. Moreover, retail customers already receive sufficient notice of copper retirement, and the Commission should not expand such notice requirements beyond those customers directly affected by a copper retirement. Section 251(c)(5), which governs intercarrier interconnection, provides no authority for a notification requirement for retail customers.

Backup Power Rules. Consistent with CSRIC's proposals, the Commission should recognize that backup power matters are best left to consumer choice and the well-functioning CPE market, not to top-down mandates. While some commenters urge the Commission to adopt rules that would force one particular class of service providers (ILECs) to bear primary responsibility for the provision of backup power, there is no evidence that such requirements are necessary to protect consumers or even consistent with their preferences. On the contrary, the substantial majority of consumers are choosing to forego the use of self-powered ILEC offerings in favor of alternatives that are not self-powered but offer other advantages that consumers value more highly. Given their long experience with securing their own backup power solutions, customers would be best served by keeping control over how backup power needs are met. Accordingly, the most effective approach is for the Commission to endorse the best practices recently recommended by the CSRIC – namely, that service providers educate, provide information and make effective battery backup power options available.

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REPLY COMMENTS OF CENTURYLINK¹

I. INTRODUCTION.

As CenturyLink explained in its opening comments, the communications landscape is being reshaped by the transition from legacy copper-based telephone networks to all-purpose fiber networks carrying Internet Protocol (“IP”) services and the migration of customers away from legacy incumbent local exchange carrier (“ILEC”) services toward mobile and IP-based offerings offered by a wide variety of providers. Amidst these transitions, ILECs face especially daunting challenges, as they are pushed by market and technological forces to upgrade their networks while contending with the high costs imposed by legacy offerings. The Commission’s central challenge in this matter is to facilitate the technological migration, which offers plentiful benefits to customers of all types, and to thereby ensure that ILECs can provide a meaningful competitive alternative to high-speed cable networks. If it does so, it can promote its principal

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

policy goal in this area: the deployment of better, faster, and more ubiquitous high-speed networks.

Some commenters, however, appear to believe that the Commission's goal here should not be to ensure deployment and competition in the provision of truly high-speed offerings, but rather to maximize wholesale access to legacy facilities and ensure that the characteristics of traditional telephony are precisely replicated and remain available forevermore. These commenters ignore the fact that consumers are abandoning these legacy offerings in droves – both in residential markets, where users have flocked to mobile and voice-over-Internet Protocol (“VoIP”) offerings that differ significantly from traditional ILEC services, and in enterprise markets, where customers are falling over themselves in their effort to replace legacy DSn services with high-capacity Ethernet offerings. So, too, these commenters ignore the very real effect that the panoply of new entitlements they seek will impede the deployment of new facilities and the development of facilities-based competition in the provision of truly high-speed services. Their proposals run contrary to both law and sound policy, and therefore must be rejected. Accession to such expansive parochial demands would, in short, badly undermine the Commission's stated priorities.

Rather, the Commission should chart a pragmatic course that recognizes the demands of the IP migration and relies on the same notice regime that has served customers well for decades. It should repudiate calls to reinterpret Section 214 of the Communications Act as a broad grant of wholesale access rights, and instead apply it as it always has – namely, as a means of ensuring that retail customers are made aware when a service will be discontinued and given time to transition to an alternate provider or service. This approach is even more warranted today, in the presence of nearly ubiquitous intermodal competition, than it has been in the past. The

Commission also should recognize that existing copper retirement and discontinuance processes have generally been working well, and that no party has identified any significant problem with these processes. And, consistent with the proposals of the Communications Security, Reliability and Interoperability Council (“CSRIC”), the Commission should recognize that backup power matters are best left to consumer choice and the well-functioning customer premises equipment (“CPE”) market, not to top-down mandates.

II. COMMENTS SEEKING EXPANSION OF SECTION 214’S DISCONTINUANCE MANDATES WELL BEYOND THE STATUTE’S REQUIREMENTS IGNORE SETTLED PRECEDENT AND NATIONAL BROADBAND POLICY.

A. Introduction.

As CenturyLink and others note, replacement of one facility by another, without any impact on end users, does not constitute discontinuance under Section 214(a).² Nevertheless, competitive local exchange carriers (“CLECs”) and others seek to weigh down the IP migration with unprecedented procedural obstacles ostensibly in service of Section 214(a)’s goals. CLECs propose to create from whole cloth a massive, intricate wholesale access entitlement regime aimed at securing a permanent niche for CLECs that would dramatically impair the IP transition. They propose burdensome filing requirements for any change in services that might be used by another carrier, buttressed by un rebuttable presumptions and seemingly permanent legacy service obligations that would consign ILECs to perpetual administrative gridlock as they seek to upgrade their networks.

This regime would harm consumers and violate national broadband policies. Moreover, the CLECs’ proposals are based on factual assumptions at odds with today’s competitive

² See *Lincoln County Tel. System, Inc. v. Mountain States Tel. & Tel. Co.*, 81 F.C.C.2d 328, 335 ¶ 22 (1980) (cited in CenturyLink Comments at 17).

communications industry. As recognized in the National Broadband Plan and by Chairman Wheeler, forcing carriers to divert investment resources to legacy facilities directly undercuts next-generation network expansion.³ Indeed, the economics of fiber overbuilding are already marginal in many areas of the nation. If ILECs are forced to retain and maintain their legacy copper networks for an artificially extended period while they upgrade to fiber, the extra cost of maintaining two parallel networks will sabotage ILEC investments in new fiber. With CLECs relying on ILEC services instead of deploying new facilities, and ILECs held back by onerous discontinuance rules, cable providers will be the only entities proceeding with significant fiber deployment under the onerous ILEC-specific discontinuance regime envisioned by the CLECs and other commenters.

This regime would violate decades of Section 214 precedent. Section 214 should not be distorted in this manner to protect a particular category of carriers by guaranteeing their access to obsolete services, to the detriment of consumers clamoring for new IP-based services. As AT&T observes, the view that “[t]echnology transitions must not harm or undermine competition,” should not be turned on its head to mean that “competitors should be shielded from the consequences of technological progress.”⁴

³ FCC, *Connecting America: The National Broadband Plan* at 49, 59 (2010) (“*National Broadband Plan*”), available at <http://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf>; 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 (cited in CenturyLink Comments at 4).

⁴ AT&T Comments at 62 (citation omitted).

B. Claims That Continued CLEC Access to Legacy DSn Wholesale Offerings Is Necessary Are Without Merit.

The NPRM’s proposed presumption that discontinuance of a service used as an input by CLECs “can also be expected to affect” the CLEC’s retail customers⁵ has no basis and is contrary to the reality of today’s competitive telecommunications market.⁶ Given the extensive intermodal competition detailed in the initial comments and end users’ demand for IP-based services, there would be no reason to “expect” that an ILEC discontinuance of TDM legacy service and its replacement with an IP-based service would leave end users without a service that *they* would consider an adequate substitute for the discontinued service. As Verizon observes, “[f]or more than a decade, consumers have shifted in massive numbers away from those legacy networks and services to new platforms for their communications.”⁷

Commenters attempt to support the presumptions proposed in the NPRM with anecdotes from satisfied customers,⁸ but fail to demonstrate that adequate retail substitutes would not be available if an ILEC discontinued an input service used by one or more CLECs. Assertions that only legacy ILEC DSn offerings can be used to provision services to regional or national business customers with multiple small locations⁹ are belied by well-established market trends. Ethernet and other broadband services, offered by cable modem providers using fiber and hybrid

⁵ See *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications*, Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968, 15009-10 ¶ 102 (2014) (“NPRM”).

⁶ See, e.g., AT&T Comments at 49-52.

⁷ Verizon Comments at 4.

⁸ See, e.g., Windstream Comments at 8-9, 14-15.

⁹ See Birch *et al.* Comments at 5-6; Windstream Comments at 9, 15-20; Wholesale DS0 Coalition Comments at 2-4; Granite Comments at 3-5.

fiber coaxial facilities via CLECs and fixed wireless carriers, have been displacing DSn services for years.¹⁰

As a result, telecommunications companies accounted for only about 41 percent of fixed broadband connections as of mid-2013,¹¹ and that does not include the 181 million mobile broadband connections in the U.S. as of that date.¹² CLEC Level 3 is now the second largest provider of Ethernet services, ahead of both Verizon and CenturyLink, and Time Warner Cable is in fifth place, followed by Comcast and Cox.¹³ ILECs now control less than half of the total Ethernet marketplace.¹⁴ Bloomberg/BNA estimates that, by 2017, cable companies will control more than 40 percent of U.S. small business Ethernet services.¹⁵ Cable companies can serve out-of-region locations through Network-to-Network Interface agreements with other cable companies, thereby extending their competitive reach into the mid-size, multi-location business market.¹⁶

¹⁰ See Comments of CenturyLink, Inc. at 14-32, WC Docket No. 05-25 (Feb. 11, 2013).

¹¹ Indus. Analysis & Tech. Div., FCC, *Internet Access Services: Status as of June 30, 2013* at 23, Table 5 (2014) (“*Mid-2013 Internet Access Report*”), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-327829A1.pdf.

¹² *Id.* at 2, Figure 1.

¹³ Vertical Systems Group: *2014 U.S. Carrier Ethernet Leaderboard* (Feb. 19, 2015), available at <http://www.verticalsystems.com/vsglb/2014-u-s-carrier-ethernet-leaderboard>.

¹⁴ Reply Comments of AT&T at 26, WC Docket No. 05-25 (Mar. 12, 2013).

¹⁵ Letter from Glenn Reynolds, VP, Policy, USTelecom, to Marlene Dortch, Secretary, FCC, at 3-4, WC Docket No. 05-25 (June 4, 2014).

¹⁶ Alan Breznick, Heavy Reading, *White Paper: Cable Finds Big Opportunity in Big(ger) Business* at 9, 16 (May 2013), available at http://www.cyaninc.com/assets/docs/whitepapers/cable_operators_big_business_opportunity_white_paper.pdf.

As CenturyLink stated in its initial comments, 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.¹⁷ Those trends continued 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. CenturyLink's experience is similar – from January 2012 to December 2014, the number of DS1 special access circuits it provided declined by 36 percent.¹⁸ The CLECs have not explained why facilities that are so crucial to competition are in such low demand – or why national broadband policy should be sacrificed in order to maximize the opportunities of certain providers in the rapidly shrinking legacy service market.

Nor is there merit to claims that there is no facilities-based competition to serve most commercial locations. According to a fact sheet issued when Level 3 and tw telecom announced their plan to merge, the combined company has nearly 119,000 intercity fiber route miles, including nearly 83,000 route miles in the United States.¹⁹ The combined company has over 60,000 of metro fiber in place in North America.²⁰ Even before the merger – in 2012 – Level 3

¹⁷ CenturyLink Comments at 10.

¹⁸ *Id.*

¹⁹ See Level 3 and tw telecom, *Level 3 to Acquire tw telecom*, Fact Sheet, June 16, 2014, available at http://www.twtelecom.com/PDFs/Investors/Financial-Reporting/LVLT-TWTC_Fact-Sheet_Final_2014-06-16/.

²⁰ *See id.*

had 100,000 buildings within 500 feet of its fiber network, which it could connect “at a very low cost,”²¹ and tw telecom served “about 40% of the Fortune 1000 in some form or fashion.”²²

In August 2012, XO announced that it had become “the first service provider in the United States to deploy 100 Gbps . . . optical technology across a long haul fiber network on a nationwide basis.”²³ As of 2015, XO’s Ethernet private line services offered a “[b]road nationwide reach to more than 85 . . . markets,” and its metropolitan networks included “more than 1 million fiber miles.”²⁴

Cable companies have quickly expanded their scope of operations in the enterprise service market. Time Warner Cable (“TWC”) recently announced that it “connected nearly 70,000 buildings to our network in 2014, bringing the total number of connected buildings to 930,000.”²⁵ Cable providers are in the “ideal position to develop comprehensive carrier Ethernet architecture to support a wide range of business services,” as they pass three-quarters of the nation’s businesses.²⁶ Cox is competing successfully for high-capacity customers. As of 2012,

²¹ Corrected Transcript of Level 3 Communications, Inc., Bank of America Merrill Lynch Media, Communications and Entertainment Conference at 5 (Sept. 12, 2012).

²² Corrected Transcript of tw telecom, Inc., UBS Global Media and Communications Conference at 9-10 (Dec. 4, 2012).

²³ Press Release, XO Communications, *XO Communications First Service Provider to Deploy 100G Nationwide* (Aug. 14, 2012), available at <http://www.xo.com/about/news/Pages/539.aspx>.

²⁴ XO Communications, *Ethernet Private Line*, <http://www.xo.com/services/network/ethernet/Pages/EthernetPrivateLine.aspx> (last visited Mar. 8, 2015).

²⁵ Transcript of Time Warner Cable Inc., Fourth Quarter 2014 Earnings Call at 6 (Jan. 29, 2015).

²⁶ The Insight Research Corp., *Cable TV Enterprise Services: 2012-2017* at 88, 105 (Sept. 2012) (“Cable Enterprise Services”).

Cox had 290,000 business customers and served most of the large carriers.²⁷ It was the fifth largest provider of U.S. Business Ethernet Services.²⁸

Claims that ILEC legacy facilities provide the only suitable means of offering service to businesses with multiple locations are undercut by developments such as TWC's recent announcement of "significant enhancements to its Ethernet Services portfolio, to target mid-market and enterprise customers with business locations spread across the US."²⁹

Today, [TWC] has a 150,000-fiber-route-mile network infrastructure that currently serves 31 major metro markets nationwide with more than 80,000 fiber-lit buildings, 835,000 DOCSIS-equipped buildings and connectivity into 64 data centers across the nation. This network will be complemented with last mile access from over 25 alternate access service providers through 130 External Network-to-Network Interface (ENNI) locations already in place.

"Today's announcement from Time Warner Cable Business Class is great news for *mid-market and enterprise organizations with multiple locations across the United States*," said Nav Chander, Research Manager, Enterprise telecom at IDC.

....

"These new enhancements to our Ethernet Service portfolio further demonstrate our commitment to provide reliable, scalable, and standards-compliant network solutions to mid-market and enterprise customers, *particularly those with geographically dispersed locations*," says Greg King, Senior Vice President, Chief

²⁷ Press Release, Cox Communications, *Cox Launches Mobile Version of Small Business Social Destination* (Oct. 9, 2012), available at <http://cox.mediaroom.com/index.php?s=43&item=634>.

²⁸ Vertical Systems Group, *2012 U.S. Business Ethernet Leaderboard* (Jan. 29, 2013) ("VSG 2012 Ethernet Leaderboard"), available at <http://www.verticalsystems.com/vsglb/2012-us-business-ethernet-leaderboard/>.

²⁹ Press Release, Time Warner Cable, *Time Warner Cable Business Class Announces Major Enhancements to Its Ethernet Services Portfolio* (Sept. 23, 2014), available at <http://business.timewarnercable.com/resource-center/news/twcbc-announces-major-enhancements-to-its-ethernet-services-portfolio.html>.

Product & Strategy Officer, Time Warner Cable Business Class. . . . By combining our robust Metro networks with our national backbone and third-party partner networks, we are giving large businesses another choice when selecting a service provider for their national networks.”³⁰

Analysts have recently noted that TWC “is very quickly becoming . . . [a cable company] that is capable of serving more sophisticated multi-site businesses, while also using its efforts to be more effective selling to smaller businesses”³¹ and one “that AT&T and Verizon should fear” as it “move[s] up market to accommodate larger multi-site business services deals.”³² Moreover, TWC is capable of competing in this market using facilities “completely separate from ILEC and CLEC networks.”³³

Similarly, Bill Stemper, President of Comcast Business Services, stated that:

[I]n many ways we are . . . serving [the enterprise] market with customers in the healthcare and financial services markets that have many locations and hundreds or thousands of employees. These types of customers have turned to Comcast Business for high-performance Ethernet services to help run their businesses.³⁴

³⁰ *Id.* (emphasis added). As of a year ago, TWC claimed to have more buildings connected via fiber than CenturyLink. Time Warner Cable, *TWC Operational and Financial Plan* at 13 (Jan. 30, 2014), available at http://ir.timewarnercable.com/files/4Q13/TWC%20Operational%20and%20Financial%20Plan%20vFinal_v001_c0fqfg.pdf.

³¹ Brian Washburn, Current Analysis, *Time Warner Cable Business Class Positions Go-Forward Operational, Portfolio Models as Comcast Merger Talks Progress* (Nov. 17, 2014).

³² Sean Buckley, *AT&T, Verizon’s fiber offerings center on reinvigorating their SMB customer bases*, Fierce Telecom (Sept. 25, 2014), available at <http://www.fiercetelecom.com/story/att-verizons-fiber-offerings-center-reinvigorating-their-smb-customer-bases/2014-09-25>.

³³ Time Warner Cable Business Class, Medium Business Solutions, available at <http://business.timewarnercable.com/solutions/medium-business.html> (last visited Mar. 8, 2015).

³⁴ Mike Robuck, *Comcast’s Stemper takes care of business*, CED Magazine (June 18, 2013), available at <http://www.cedmagazine.com/articles/2013/06/comcasts-stemper-takes-care-of-business>.

The pending Comcast/Time Warner Cable merger would vastly increase the combined firms' ability to compete. The post-merger company would be the second largest voice service provider in the nation and would have a significant impact on the multi-location business market. As Artie Minson, Executive Vice President and Chief Financial Officer of TWC, noted last year, "I think one of the real benefits out of the Comcast transaction is our ability to begin to move more up market and sell multi-regional and national customers."³⁵ Cable providers will become even stronger competitors – and render legacy copper offerings even less useful – as they continue their investments in DOCSIS 3.0 and DOCSIS 3.1 systems.

CLECs have no intention of turning the multi-location business market over to the cable companies without a fight. Jeff Gardner, then President and CEO of Windstream, asserted in 2014 that "once Time Warner and Comcast get together, they are going to try to get -- go up market," but "I think we have got a big advantage there in terms of what we can do with multi-location yields. . . ."³⁶ At another presentation, he elaborated:

We're really uniquely positioned in the industry. . . . Our sweet spot is the mid-sized enterprise carrier and so we're competing in a space that many of the cable companies don't play in, because *our customers are most mostly multi-location managed services customers on the enterprise side*. And we're really focusing on a space where *the larger players in the industry are really focused on bigger companies*.³⁷

³⁵ Transcript of Time Warner Cable Inc., JPMorgan Global Technology, Media and Telecom Conference – Preliminary at 8 (May 21, 2014).

³⁶ Edited Transcript of Windstream Corp., Goldman Sachs Communacopia Conference at 10 (Sept. 12, 2014).

³⁷ Edited Transcript of Windstream Communications, Sanford C. Bernstein Strategic Decisions Conference at 2 (May 29, 2014) (emphasis added).

Although Gardner also conceded that the cable companies will “get better at handling more multi-location customers,”³⁸ he is clearly of the opinion that Windstream – and, by extension, other CLECs – have advantages over not only cable companies, but, also, ILECs, in the mid-sized multi-location business market, a view that undercuts the CLECs’ advocacy in this proceeding. Cogent Communications also is not dependent on ILEC TDM connections.

We experienced a significant uplift in off-net ARPU as we migrated customers from TDM services, primarily bonded T1’s, to Ethernet services. Today over 85% of our off-net base is using Ethernet services and we expect that TDM base to virtually disappear over the next couple of years. . . . When we sell off-net we search competitive providers as well as incumbents for the best loop prices possible. Now the majority of our loops come from the incumbent, but with cable competition in our off-net footprint we’ve actually had the ability to buy loops from some of those cable companies and that has driven down the loop costs which have then allowed us to pass those on to the customers and lower ARPU.³⁹

Moreover, as another mode of access, wireless technology, continues to mature, high-capacity services once available only over copper, coaxial cable, or fiber optics are increasingly being provisioned over the airwaves. For example, as of 2015, XO had broadband wireless spectrum in 80 major metropolitan markets to provide Broadband Wireless Access for Ethernet, Private Line and dedicated Internet access services.⁴⁰ Its “Fixed Broadband Wireless Access” service offers “an alternative last-mile and metro-area access solution” with “speeds up to 1

³⁸ *Id.*

³⁹ Edited Transcript of Cogent Communications, Fourth Quarter 2014 Earnings Call (Feb. 25, 2015).

⁴⁰ See XO Communications, Network Assets Maps, <http://www.xo.com/about/network/Pages/maps.aspx> (last visited Mar. 8, 2015).

Gbps.”⁴¹ As Sprint points out on its website, a benefit of mobile broadband is that it can be used to connect “remote business locations when and where traditional dedicated circuits may be unavailable.”⁴²

Finally, the fact that unbundled DSn-capacity facilities are unavailable in some locations has no bearing here. As Birch *et al.* acknowledge, where DSn-capacity UNEs are unavailable, that is generally because the Commission’s impairment triggers are not satisfied,⁴³ meaning that CLECs do not need ILEC facilities to compete in those locations. As the Commission held when it developed those triggers, where DSn-capacity transport links are exempt from unbundling, it is because “significant revenue opportunities at both ends of [the] route[] make it highly likely that competing carriers have deployed or can deploy [their own facilities] in an economic manner.”⁴⁴ Where a DSn-capacity loop is unavailable, it is because competitors are “ab[le] to deploy their own facilities or obtain access to other competitively deployed networks on a wholesale basis.”⁴⁵

⁴¹ XO Communications, Fixed Broadband Wireless Access, <http://www.xo.com/services/network/Pages/broadband-wireless.aspx> (last visited Mar. 5, 2015).

⁴² Sprint, Secure, managed and reliable connectivity for your business locations, http://shop.sprint.com/mysprint/services_solutions/details.jsp?detId=wireless_wan&catId=solution_ip_convergence_fixed_wireless&catName=IP%20WAN%20Convergence%20-%20Fixed%20Wireless&detName=Wireless%20WAN&specialCat (last visited Mar. 8, 2015).

⁴³ Birch *et al.* Comments at 6-7.

⁴⁴ *Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd 2533, 2606 ¶¶ 129-130 (2005) (“*Triennial Review Remand Order*”), *aff’d sub nom. Covad Commc’ns Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

⁴⁵ *Id.* at 2623 ¶ 161.

C. Proposals to Massively Expand Section 214’s Scope Have No Basis in Law or Policy.

1. THE PROPOSALS WOULD VASTLY EXPAND THE RANGE OF UPGRADES AND OTHER MODIFICATIONS SUBJECT TO SECTION 214(A).

Apparently viewing the IP migration not as an opportunity to deploy new and better services to end users but rather as a chance to secure indefinite access rights to legacy facilities, CLECs issue a laundry list of demands here that extend far beyond the statute’s terms and dramatically deter the advent of an all-IP network infrastructure. CLECs support a presumption that a carrier must obtain Commission approval before discontinuing, reducing or impairing a wholesale service.⁴⁶ As CenturyLink and other commenters have explained, however, wholesale services are irrelevant under Section 214(a) except insofar as services to end users are discontinued or impaired.⁴⁷ The Commission has always distinguished between the impact of a service modification on “the end service provided by a carrier to a community . . . *i.e.*, the using public” and the impact on another carrier; only the former is addressed by Section 214.⁴⁸ Thus, as AT&T and other commenters point out, the proposed presumption is contrary to Section 214’s text and purpose.⁴⁹

But commenters clearly would not be satisfied even with a presumption that every wholesale discontinuance is a retail discontinuance. Instead, they demand a host of extremely oppressive requirements premised on the view that their own business interests trump the public

⁴⁶ See, e.g., Windstream Comments at 33; Birch *et al.* Comments at 8-10 (citing NPRM, 29 FCC Rcd at 15009-10 ¶¶ 102-03).

⁴⁷ See CenturyLink Comments at 15-16; AT&T Comments at 49-59.

⁴⁸ *Western Union Telegraph Co.*, 74 F.C.C.2d 293, 296 ¶ 7 (1979) (“*Western Union*”).

⁴⁹ AT&T Comments at 50-55.

interest in new deployment. The NPRM suggests that the presumption at issue could be rebutted by showing that a wholesale discontinuance would not discontinue or impair end user service or impair the adequacy of service to end users by the ILEC or CLECs.⁵⁰ In response, CLECs propose that the Commission require onerous showings for such rebuttal. For example, Birch *et al.* would require an ILEC to file, and serve on all CLEC customers, six months prior to the proposed discontinuance, a certification explaining why a wholesale discontinuance would not result in a cessation of service to retail customers.⁵¹ Under that proposal, if the wholesale customer, as result of the discontinuance, experienced higher costs and “would likely need to” pass along the higher costs in its retail rates or materially alter the features, functions or characteristics of its retail services, its retail services would be considered to be discontinued or impaired.⁵² Moreover, Birch *et al.* propose a *one-year notice* before an ILEC may file a discontinuance application and a grandfathering rule providing that any discontinued DSn special access service be extended for at least *three years* (and maybe longer).⁵³

Several commenters seek to dispense with rebuttable presumptions altogether and move right to conclusive judgments that wholesale discontinuances must be subject to Section 214’s requirements. Windstream and XO would make the presumption conclusive in the case of “last-mile services” provided by a CLEC to an end user.⁵⁴ The Competitive Carriers Association (“CCA”) would make the presumption conclusive for any discontinuance of wholesale TDM

⁵⁰ NPRM, 29 FCC Rcd at 15010 ¶ 103.

⁵¹ Birch *et al.* Comments at 9-10.

⁵² *Id.* at 10.

⁵³ *Id.* at 10-11.

⁵⁴ Windstream Comments at 33; XO Comments at 23.

services, because such discontinuance “inevitably impacts end users.”⁵⁵ CCA would apply this conclusive presumption even in the case of two-step resale relationships – where an ILEC discontinues a service used by a CLEC to provide a service to a wireless carrier for its provision of services to end users. According to XO, the impact of a wholesale service’s discontinuance on the end user is “virtually axiomatic.”⁵⁶ Comptel would make the presumption conclusive for *all* ILEC DS_n services,⁵⁷ and asks the Commission to simply reinterpret Section 214 to cover any discontinuance of service to another carrier by defining carriers as part of the “community” covered by Section 214.⁵⁸

These proposals would be inimical to Section 214’s purposes and to the public interest. Where “structural changes in the market[,] . . . changes in demand, [and] technological changes have led to new means of offering” a service, but the service “continues to remain available to” end users, “application of Section 214 . . . is not required by the statute and would be inappropriate in a technologically dynamic market.”⁵⁹ In fact, because the discontinuance provisions of Section 214(a) were added to address the telegraph monopoly, the “declining importance” of existing services resulting from technological changes “undercut[s] the rationale

⁵⁵ CCA Comments at 10-11.

⁵⁶ XO Comments at 23.

⁵⁷ Comptel Comments at 8-12.

⁵⁸ *Id.* at 5-8.

⁵⁹ *Regulatory Policies Concerning the Provision of Domestic Pub. Message Servs. by Entities Other Than the Western Union Telegraph Co. & Proposed Amendment to Parts 63 & 64 of the Comm’n’s Rules*, 75 F.C.C.2d 345, 376 ¶ 103 (1980) (“*Domestic PMS Order*”), *aff’d sub nom. Western Union Tel. Co. v. FCC*, 665 F.2d 1112 (D.C. Cir. 1981).

for” those provisions.⁶⁰ Thus, Section 214(a) does not cover technological upgrades that do not affect the provision of services.⁶¹

The “rationale for” applying Section 214(a) to a “technologically dynamic market” would be especially “undercut” by a presumption that would lock into place legacy services, such as DS_n facilities, that are of “declining importance” to other carriers.⁶² As discussed above, sales of DS_n services have plummeted, as CLECs increasingly use Ethernet and other IP-based broadband inputs for their retail services. Section 214(a) should not be used to block the natural life cycle evolution of communications networks by hindering the customer-driven migration from facilities that are no longer useful to more advanced facilities and services. The impact of this transition is being felt in every niche in the communications industry. For example, manufacturers have been phasing out equipment that supports legacy facilities, making them even more difficult to maintain.⁶³ The Commission would only harm consumers by freezing unwanted retail or wholesale products in place, thereby preventing the deployment of facilities and services that consumers and carriers desire.

The CLECs’ proposals would not only extend well beyond Section 214(a)’s scope, but also place very substantial burdens on fiber deployment, in contravention of that provision’s purpose. The Commission historically has interpreted Section 214 so as not to “impose burdens

⁶⁰ *Id.* at 376 ¶ 102.

⁶¹ Moreover, as Verizon notes, the application of Section 214(a) should not turn on whether the discontinued service is tariffed. Verizon Comments at 29-30. Section 214(a) should not be stretched to cover the discontinuance of a tariffed service where a functionally similar non-tariffed service is available. *Id.*

⁶² *Domestic PMS Order*, 75 F.C.C.2d at 376 ¶¶ 102-03.

⁶³ *See CenturyLink Comments* at 9-15.

on firms wishing to continue providing service in a more efficient and cost-effective manner” or to “require carriers to subsidize the continued use of [unneeded] facilities to the detriment of [their] ratepayers.”⁶⁴ The Commission has recognized that a framework “restricting carriers’ ability to respond to changing market conditions in the most efficient technological manner possible” through strict discontinuance rules “would hamper their ability to perform in a competitive market.”⁶⁵ It has been careful to apply Section 214 so as not to “create[] a financial burden . . . due to the administrative burdens of maintaining two separate regulatory offerings for the same service,”⁶⁶ and has worked to avoid forcing carriers to bear “the costs” “of supplementing [a] new fiber network with copper to continue to provide legacy . . . [s]ervices . . . where there are very few customers,” which would “have a significant negative financial impact on the carrier.”⁶⁷

The proposals on the record brazenly flout these Commission principles. The onerous discontinuance procedures advocated by the CLECs would prevent ILECs from upgrading their networks and providing IP-based services in many areas. The Commission should not reverse course now in its decades-long interpretation of Section 214(a) by adopting burdensome conditions on retail service discontinuance, thereby imposing “constraints on broadband

⁶⁴ *Domestic PMS Order*, 75 F.C.C.2d at 376 ¶ 104.

⁶⁵ *Id.*

⁶⁶ *Verizon Tel. Cos.*, Order, 18 FCC Rcd 22737, 22743 ¶ 10 (2003) (“*Verizon Expanded Interconnection Order*”).

⁶⁷ *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 ¶ 9 (WCB 2013) (“*Verizon Copper Discontinuance Order*”).

innovation and infrastructure investment”⁶⁸ and leaving ILECs with “costly redundant systems and duplicative processes.”⁶⁹

The various CLEC proposals are rife with additional defects. For example, Birch *et al.*'s one-year notice proposal reflects a deep misunderstanding of the speed with which the competitive marketplace operates. As Verizon points out, current discontinuance procedures are *already* burdensome and slow-moving under the ostensible 30- and 60-day notice periods; a tenfold (or more) expansion of such requirements would be utterly infeasible. Likewise, as the Commission already held in *Western Union*, the Act's structure precludes Comptel's proposal that the Commission simply reinterpret Section 214(a) to encompass wholesale discontinuances.⁷⁰ And contrary to the presumptions proposed by Birch *et al.* and other CLECs, rate increases need not be addressed in the context of Section 214 – they can, like other common carrier rates and practices, be considered under other provisions of the Act.⁷¹ As the Commission held in the *Dark Fiber Order*, “if a service discontinuance to a carrier causes it to make technical changes in the way it provides service to its customers, or requires that it pay more for service alternatives in order to continue providing service to its customers, *but in no*

⁶⁸ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14899 ¶ 86 (2005), *aff'd sub nom. Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007).

⁶⁹ *Id.* at 14889 ¶ 68. *See also id.* at 14907-08 ¶¶ 100-101 (granting blanket discontinuance of transmission component of Internet access service on a stand-alone basis).

⁷⁰ *Western Union*, 74 F.C.C.2d at 296 ¶ 7.

⁷¹ *See id.*; CenturyLink Comments at 21-23, 26-27.

way impairs its ability to continue providing service to its customers, then no Section 214 issue arises.”⁷²

2. THE PROPOSED “EQUIVALENT WHOLESALE ACCESS” ENTITLEMENT IS NOT AUTHORIZED BY SECTION 214 AND WOULD IMPAIR THE IP TRANSITION.

Commenters such as Birch *et al.* and the Wholesale DS0 Coalition seek to require an ILEC discontinuing a service used as a wholesale input to commit to provide CLECs equivalent wholesale access on equivalent rates, terms and conditions, irrespective of any other alternative services available to CLECs or end users.⁷³ XO argues that the discontinuing ILEC should provide the equivalent access “indefinitely.”⁷⁴ These proposals would extend Section 214’s reach far beyond anything contemplated by the statute, and must be rejected.

Section 214 does not authorize an “equivalent wholesale access” requirement. As discussed above, Section 214 affords the Commission no power to regulate rates and terms of wholesale services except insofar as end user services are discontinued or impaired.⁷⁵ The proposed requirement, however, would apply irrespective of any discontinuance or impairment of end user services. CLECs try to justify the equivalent wholesale access requirement by arguing that, without it, competitors’ costs would increase, forcing them to raise rates to end users.⁷⁶ Even if true, this claim would not be determinative under Section 214. Rather, any

⁷² *Southwestern Bell Tel. Co.*, Memorandum Opinion and Order, 8 FCC Rcd 2589, 2599 ¶ 48 (1993) (“*Dark Fiber Order*”) (emphasis added), *rev’d on other grounds sub nom. Southwestern Bell Tel. Co. v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994) (cited in Birch *et al.* Comments at 24).

⁷³ Birch *et al.* Comments at 8, 10-14; Wholesale DS0 Coalition Comments at 4-5.

⁷⁴ XO Comments at 26.

⁷⁵ *See Western Union*, 74 F.C.C.2d at 296 ¶ 7.

⁷⁶ *See, e.g., Birch et al.* Comments at 7-8.

secondary rate increases must be balanced against several other factors, including the availability of other alternative end user services⁷⁷ and, more broadly, the effect of expanded wholesale mandates on the deployment of next-generation IP services.

Moreover, it would distort the Communications Act to read Section 214 as imposing wholesale access obligations that are inconsistent with those imposed under Section 251 – the provision addressing wholesale/resale obligations.⁷⁸ As Corning points out, without a showing of competitive “impairment,” the Commission may not require unbundling under Section 251.⁷⁹ The Supreme Court has held that where Congress “has created a distinct scheme to regulate” an activity, an agency is “preclude[d]” from doing so through other means.⁸⁰ The Commission thus may not circumvent the Section 251 unbundling regime through the use of Section 214.⁸¹

Other provisions also do not permit adoption of an “equivalent wholesale access” requirement. Birch *et al.* suggest that Sections 201(b) and 706 of the Act afford the Commission additional authority for imposing the equivalent wholesale access requirement.⁸² Section 201(b), however, addresses rates and practices; it does not govern the discontinuance process, and cannot be reframed as supplanting the provision that does. Section 706 is also inapplicable here. Its

⁷⁷ See *Verizon Expanded Interconnection Order*, 18 FCC Rcd at 22742 ¶ 8; *Dark Fiber Order*, 8 FCC Rcd at 2600 ¶ 54.

⁷⁸ See, e.g., AT&T Comments at 58; Corning Comments at 22-23.

⁷⁹ Corning Comments at 21-22. See 47 U.S.C. § 251(d)(2).

⁸⁰ *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 156 (2000).

⁸¹ See also *Verizon v. FCC*, 740 F.3d 623, 649 (D.C. Cir. 2014) (Commission “may not . . . utilize . . . power [under one provision] in a manner that contravenes any specific prohibition” in another).

⁸² Birch *et al.* Comments at 26-28.

purpose is to *encourage* the deployment of broadband services. The equivalent wholesale access requirement, however, would accomplish the *opposite* result by deterring both ILECs and CLECs from deploying fiber (and, in turn, diminishing cable providers' own deployment incentives). As Chairman Wheeler has recognized, ILECs cannot afford to maintain their state-of-the-art fiber and legacy copper networks in parallel. And as the Commission has pointed out, legacy facilities have "higher expected operating expenses" than fiber.⁸³ Strict discontinuance rules thus will deter ILEC fiber deployment. Likewise, if CLECs continue to use ILEC copper-based services, they will have no incentive to deploy their own facilities. As the Commission found in a unanimously approved section of the *Triennial Review Order*, mandatory unbundling of next-generation network elements "would blunt the deployment of advanced telecommunications infrastructure by incumbent LECs and the incentive for competitive LECs to invest in their own facilities."⁸⁴ The same is true for the underlying facilities.⁸⁵

The CLECs' Replacement Service Criteria Are Not Authorized by Section 214(a). Not content to support an unprecedented equivalent wholesale access requirement, some commenters go still further, articulating a detailed hodge-podge of requirements that they believe should

⁸³ *Connect America Fund*, Report and Order, 28 FCC Rcd 5301, 5315 ¶ 33 (WCB 2013).

⁸⁴ *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, 17149 ¶ 288 (2003) ("*Triennial Review Order*") (subsequent history omitted). *See also id.* at 17150 ¶ 290 ("by prohibiting access to the packet-based networks of incumbent LECs, we expect that our rules will stimulate competitive LEC deployment of next-generation networks.").

⁸⁵ Comptel, at 16-17, argues that Section 214(c) provides authority to attach terms and conditions, such as the equivalent wholesale access requirement, to a grant of discontinuance, but that authority cannot add to the scope of Section 214(a), which does not cover wholesale services directly. *See Western Union*, 74 F.C.C.2d at 296 ¶ 7.

attend such a mandate. These backward-looking mandates would consume significant resources and undercut ILEC deployment. For example:

- The Wholesale DS0 Coalition supports Windstream’s proposal to regulate the per-Mbps wholesale and retail price of replacement services and ensure that all aspects of the discontinued service be replicated by the replacement service.⁸⁶
- Windstream supplements the onerous and unprecedented criteria it proposed last autumn, adding that an ILEC also should be required, among other things, to hire an independent auditor to ensure continued provision of equivalent access requirement every two years, and post the results of each audit to its website.⁸⁷
- Birch *et al.* suggest among other things that all of the details regarding the rates, terms and conditions of the replacement service be posted on the discontinuing carrier’s website and that the carrier provide 6 months’ notice of any changes in any of those details.⁸⁸
- Comptel goes so far as to insist that any replacement service recapitulate the inefficient legacy PSTN architecture.⁸⁹
- Public Knowledge *et al.* and other commenters also support intricately detailed replacement service criteria⁹⁰ to ensure that any replacement service has “the same characteristics as traditional Plain Old Telephone Service (POTS).”⁹¹

⁸⁶ Wholesale DS0 Coalition Comments at 6-7. *See also* Letter from Jennie B. Chandra, VP – Public Policy & Strategy, Windstream Commc’ns, Inc., to Marlene H. Dortch, Sec’y, FCC, GN Docket No. 13-5, *et al.*, attachment, Proposed Standard to Govern Section 214 Discontinuances of TDM-Based Products (Sept. 26, 2014) (cited in NPRM, 29 FCC Rcd at 15013-14 ¶ 111 n.215); Windstream Comments at 27-30 (discussing six service equivalency criteria).

⁸⁷ Windstream Comments at 30-31.

⁸⁸ Birch *et al.* Comments at 13.

⁸⁹ Comptel Comments at 24.

⁹⁰ *See, e.g.*, Public Knowledge *et al.* Comments at 8-19.

⁹¹ *Id.* at 9. Birch *et al.* and Comptel also would regulate in detail ILECs’ ability to impose special construction charges related to any replacement services. For example, they propose to require ILECs to provide a detailed factual explanation supporting any assertion that existing facilities have reached exhaust and to prohibit such charges where “the incumbent LEC would add capacity to its network in the normal course of business.” Birch *et al.* Comments at 14-16; Comptel Comments at 22-23.

As CenturyLink has pointed out, criteria such as those detailed above are untenable, and would force ILECs to simply recreate discontinued services. Section 214(a) does not authorize such micromanagement of the adequacy of replacement services. Replacement services need not be “exact substitutes for,” or even “the same type of service” as, the discontinued service under Section 214.⁹² The fact that customers might incur greater costs or that the replacement services do not have the same coverage as the discontinued service does not render the replacement services “nonviable as a substitute.”⁹³ Reasonable alternative services may be more “administratively burdensome and costly” than the discontinued service if they are still affordable.⁹⁴ Given the tremendous technological upheaval in today’s marketplace and the rapid displacement of ILEC TDM services by CLEC, cable and wireless providers, there is no reason to expect that the replacement services demanded by consumers will be exact replicas of the services from which they are fleeing, and the Commission should not mandate such replication by regulation.⁹⁵

⁹² *AT&T Corp.*, Memorandum Opinion and Order, 14 FCC Rcd 13225, 13229-30 ¶¶ 9-11, 13233 ¶ 16 n.27 (IB 1999) (“*AT&T High Seas Order*”), *recon. denied*, 16 FCC Rcd 13636 (IB 2001).

⁹³ *Id.* at 13229-30 ¶¶ 9-11.

⁹⁴ *Verizon Expanded Interconnection Order*, 18 FCC Rcd at 22751-52 ¶¶ 27-29.

⁹⁵ The exact replication of TDM services by IP-based services also may not be technically possible in some cases. Some legacy service capabilities are a function of the underlying electrical characteristics of the legacy platform, which cannot be emulated using IP technologies. In particular, the adaptive nature of IP networks to reroute traffic around a failed circuit or device – which benefits network providers and their customers – can exhibit service delivery characteristics different from those of a point-to-point circuit.

Application of the criteria proposed by some would also be incompatible with the IP migration and inconsistent with consumers' demonstrated preferences.⁹⁶ The services that consumers and CLECs are choosing more frequently do not "have the same characteristics as traditional Plain Old Telephone Service (POTS)."⁹⁷ These next-generation offerings provide new and improved functionalities not available from the legacy services. Consumers are abandoning POTS for the mobility and convenience of wireless services and the lower cost, greater capacity and flexibility of VoIP and other IP-enabled features. Public Knowledge *et al.* insist that any replacement services have the same reliability and "call persistence" as "traditional landline phone service,"⁹⁸ but customers are fleeing legacy services with these characteristics to wireless and other services that do not exhibit as high a degree of call persistence but offer other benefits that customers apparently value more. As Verizon points out, "[o]ther services may have different functionalities, features, and costs . . . but they may in today's marketplace be perfectly acceptable substitutes for a service that an ILEC wants to discontinue."⁹⁹

Furthermore, several of the attributes proposed to determine whether a service is an adequate substitute, such as 911 and disability access, also are being addressed in industry-wide proceedings and should not be applied on an *ad hoc* basis to discontinuance proceedings.¹⁰⁰

⁹⁶ CenturyLink Comments at 24-26. *See also* AT&T Comments at 46; Verizon Comments at 4 (detailing consumers' "shift[] in massive numbers away from . . . legacy networks and services to new platforms"), 5-9, 29.

⁹⁷ Public Knowledge *et al.* at 9.

⁹⁸ *Id.* at 19.

⁹⁹ Verizon Comments at 29.

¹⁰⁰ AT&T Comments at 47-49; CenturyLink Comments at 25.

Imposing unique 911 and disability access requirements on Section 214 discontinuance applications would create arbitrarily inconsistent regimes for ILECs and other carriers.

For all their detail, the CLECs' proposals entirely overlook significant factors that the Commission has traditionally considered in reviewing the adequacy of replacement services. For example, their criteria omit alternative services already provided by the ILEC, cable providers, over-the-top VoIP providers, wireless carriers, and CLECs. Section 214(a) requires consideration of alternative services from *any* source, not just the discontinuing carrier or its carrier customers.¹⁰¹ The equivalent wholesale access requirement proposed by the CLECs would operate whether or not end users already had reasonable alternatives available to them and thus goes beyond what Section 214 requires. As Verizon notes, intermodal competition has driven ILEC market shares so low that it is quite likely that there is a suitable replacement service available from "one of the many other providers in the marketplace."¹⁰² Similarly, the CLECs seem to have overlooked the advantages of fiber over copper, including increased reliability, which are causing millions of consumers to switch to high capacity IP-based services.¹⁰³ By ignoring existing alternative services and the benefits of fiber-based broadband services, the CLECs have skewed their analyses of service equivalence beyond any resemblance to or consistency with Section 214(a).

Ultimately, CLECs' insistence that replacement services be clones of any discontinued service would ensure that the industry remains tied to the legacy infrastructure. Section 214 was

¹⁰¹ *Rhythms Links Inc. Section 63.71 Application to Discontinue Domestic Telecommunications Services*, Order, 16 FCC Rcd 17024, 17027 ¶ 8 (CCB 2001); *AT&T High Seas Order*, 14 FCC Rcd at 13229-33 ¶¶ 8-16 & n.27.

¹⁰² Verizon Comments at 27-29.

¹⁰³ *See id.* at 4-9.

never intended to prevent technological upgrades. It exempts any “changes in plant, operation, or equipment . . . which will not impair the adequacy or quality of service provided.”¹⁰⁴ As noted by Verizon, Congress rejected proposed language that would have required approval for the “abandonment of a line, plant, office or other physical facility,” underscoring that no Section 214 authorization is necessary for technological upgrades.¹⁰⁵ However well intentioned, a reversal in course would contravene decades of Commission precedent allowing discontinuances unless “an unreasonable degree of customer hardship would result.”¹⁰⁶

In applying Section 214, the Commission has always recognized that, “even though some customer dislocations might be attendant thereto,” “in a competitive marketplace ease of exit is essential.”¹⁰⁷ The CLECs’ proposed criteria for replacement services thus should be rejected as unauthorized by Section 214(a). Section 214(a) does not require that the discontinuance process be as seamless as CLEC commenters demand or that consumers be insulated from the reasonable adjustments that millions of subscribers have willingly made in upgrading to IP-enabled broadband offerings.

¹⁰⁴ 47 U.S.C. § 214(a).

¹⁰⁵ Verizon Comments at 24 (citation omitted).

¹⁰⁶ *Policy & Rules Concerning Rates for Competitive Common Carrier Servs. & Facilities Authorizations Therefor*, First Report and Order, 85 F.C.C.2d 1, 49 ¶ 146 (1980) (subsequent history omitted) (“*First Competitive Carrier Order*”). See also *Verizon Copper Discontinuance Order*, 28 FCC Rcd at 13829 ¶ 8 (granting discontinuance where “significant customer hardship” would not result).

¹⁰⁷ *First Competitive Carrier Order*, 85 F.C.C.2d at 49 ¶ 147.

3. THERE IS NO BASIS FOR REQUIRING A DISCONTINUANCE APPLICATION FOR THE ELIMINATION OF A DISCOUNT PLAN.

CLECs such as Birch *et al.* contend that the Commission should establish a presumption that ILECs be required to seek approval under Section 214 for the elimination of any tariffed term discount plan, arguing that the elimination of a discount plan is tantamount to discontinuing the discounted service.¹⁰⁸ They further seek elaborate certification requirements and other mandates as a precondition for rate-plan modifications.¹⁰⁹ As discussed above, however, Section 214 only covers actual discontinuance or impairment of service, not rate increases. As the Commission explained in *Western Union* and other cases cited in the NPRM, however, Section 214 provides no authority over rates, terms or conditions.¹¹⁰ The proposed requirements are even more extreme than the wholesale service discontinuance presumption discussed above, because they are triggered by a rate increase without any service discontinuance whatsoever.

Some parties argue that Sections 201(b) and/or 706 provide additional authority for such a presumption.¹¹¹ Any such presumption, however, is precluded by the tariff filing regime set forth in Sections 203-205 of the Act. The elimination of a discount plan will be implemented through a tariff filing. As the Second Circuit has held, under the carrier-initiated tariff filing scheme in Sections 203-205, the Commission may not impose any prerequisites or require special permission to file a tariff, at least not without going through the rate prescription hearing

¹⁰⁸ See Birch *et al.* Comments at 16-24; Comptel Comments at 14-16.

¹⁰⁹ Birch *et al.* Comments at 21-24.

¹¹⁰ NPRM, 29 FCC Rcd at 15010 ¶ 104, 15039 n.4 (Statement of Commissioner Pai) (citing *Western Union*, 74 F.C.C.2d at 295 ¶ 6).

¹¹¹ See Birch *et al.* Comments at 26-28; Windstream Comments at 34.

procedures set out in Section 205.¹¹² There is no difference between a prescription of new rates and the mandatory retention of old rates.¹¹³ The Commission also may not claim authority to impose prerequisites to carriers' ability to file tariffs under other provisions of the Act as an end run around Sections 203-05.¹¹⁴

Birch *et al.* argue that the *Telpak Order*, holding that the elimination of the Telpak bulk discount offering did not require Section 214 approval, is not relevant because it did not involve "industry-spanning competitive concerns implicated by the technology transitions."¹¹⁵ The Commission, however, has interpreted Section 214 in the context of previous technology transitions, and has never seen fit to apply such a detailed, complex set of criteria.¹¹⁶ The Commission has never applied Section 214 to rate increases, unaccompanied by service discontinuance or impairment, because all of the services previously offered under the previous rates or discount plan are still being offered.¹¹⁷ The claim that the *Telpak Order* is distinguishable because it involved a retail service, and AT&T's competitors had not relied on it to provide their services, is also meritless.¹¹⁸ As detailed above, the argument that Section 214 does not apply at all is far *stronger*, not weaker, in the case of wholesale service than in the case

¹¹² *AT&T Co. v. FCC*, 487 F.2d 865, 874 (2d Cir. 1973).

¹¹³ *Id.* at 875.

¹¹⁴ *Id.* at 876-81.

¹¹⁵ Birch *et al.* Comments at 25 (citing *AT&T Co.*, Memorandum Opinion & Order, 64 F.C.C.2d 959 (1977) ("*Telpak Order*"), *aff'd sub nom. Aeronautical Radio, Inc. v. FCC*, 642 F.2d 1221 (D.C. Cir. 1980)).

¹¹⁶ AT&T Comments at 44.

¹¹⁷ See *Aeronautical Radio*, 642 F.2d at 1233.

¹¹⁸ Birch *et al.* Comments at 25-26.

of services provided directly to end users. In any event, the NPRM's discussion of discount plans also covers retail services, such that the *Telpak Order* is directly on point.¹¹⁹

Thus, the Commission may not require ILECs to seek prior approval in order to file a tariff eliminating a discount plan. Once such a tariff is filed, parties may challenge it and raise issues under Section 201(b). In fact, *Birch et al.* point out that in 2013, AT&T filed a tariff changing its DS1/3 discount plan, which was suspended after a challenge.¹²⁰ That is the mechanism Congress established for challenging tariffed rates under the Communications Act. CLEC commenters may dislike the statute, but that is not a sufficient basis for *ignoring* the statute.

III. THE COMMISSION'S CURRENT COPPER RETIREMENT PROCESS IS WORKING, AND THERE IS NO EVIDENCE SUGGESTING THE NEED FOR ANY CHANGE TO THAT PROCESS.

A. Introduction.

As CenturyLink noted in its initial comments, and as other commenters agreed, the Commission's current copper retirement process is working well, and there is no reason to expand or revise the existing notification requirements.¹²¹ Only a handful of objections to noticed copper retirement have been filed under the Commission's existing rules, and those few objections have been resolved by the parties without regulatory mandates.¹²²

CenturyLink's own notification requirements ensure that potentially affected wholesale customers receive appropriate and timely notice of planned copper retirement and have adequate

¹¹⁹ See NPRM, 29 FCC Rcd at 15010 ¶ 104.

¹²⁰ *Birch et al.* Comments at 18-20.

¹²¹ CenturyLink Comments at 30; Verizon Comments at 13-14.

¹²² See AT&T Comments at 28-29.

time to adjust to the upcoming network change.¹²³ Apart from the wholesale copper retirement notification process, CenturyLink also provides notice to its retail customers of network upgrades that may affect them. In the case of fiber-to-the-home (“FTTH”) or fiber-to-the-curb (“FTTC”) deployments, for instance, CenturyLink will notify retail customers that may be impacted by the fiber deployment (for example, if the work will temporarily put a customer out of service, require access to the customer’s property, or require new customer equipment).¹²⁴ And CenturyLink provides this notice regardless of whether the old copper loop/subloop is retired.¹²⁵

Based primarily on rhetoric and sparse anecdotal evidence, however, many parties call for the Commission to implement much more onerous copper retirement notice requirements. If granted, these overly burdensome requests would inevitably delay the deployment and benefits of the fiber-based networks that are replacing those copper facilities. Further, overly stringent copper retirement requirements risk imposing a *de facto* approval requirement, contrary to both well-established Commission precedent and sound policy considerations.

B. Burdensome Wholesale Copper Retirement Requirements Are Unwarranted.

1. CLECs LOBBY FOR REQUIREMENTS FAR BEYOND ADEQUATE NOTICE.

The NPRM invited comment on proposed revisions to the Commission’s existing notice requirements that govern copper retirement. Those proposals were focused on revising existing network change *disclosure* rules “to allow for greater transparency, opportunities for

¹²³ CenturyLink Comments at 31.

¹²⁴ *Id.* at 32.

¹²⁵ *Id.*

participation, and consumer protection.”¹²⁶ Many commenters, however, appear to have taken the Notice as license to submit extensive wish-lists stocked with significant and burdensome changes to the Commission’s current copper retirement process. These commenters call for expansive notice requirements, moratoriums on copper retirement, and even a full-fledged copper retirement approval process.

CCA, for instance, argues that even 180-day advance notice of an ILEC’s copper retirement (as per the Notice) may be insufficient.”¹²⁷ Indeed, CCA contends that the Commission should consider “requiring ILECs to include a planned copper retirement in an annual forecast *before* giving notice to affected carriers under Part 51 of the Commission’s rules.”¹²⁸ Requiring an ILEC to include a copper retirement in an annual forecast before it can give effective notice, coupled with an advance notice requirement of greater than even 180 days, would impose an untenable planning burden on the ILEC.

Other commenters take even bolder swings. XO argues that ILECs should provide copper retirement notices a full *year* in advance,¹²⁹ and XO calls for a rule requiring ILECs to establish and maintain a full database regarding availability of copper facilities.¹³⁰ The cost to develop and maintain such a database would of course be substantial, and would divert ILEC resources away from the Commission’s principal policy objective – namely, the deployment of

¹²⁶ NPRM, 29 FCC Rcd at 14995 ¶ 55.

¹²⁷ CCA Comments at 12.

¹²⁸ *Id.* (emphasis in original).

¹²⁹ XO Comments at 17-18.

¹³⁰ *Id.* at 15-16.

next-generation facilities.¹³¹ Comptel argues that copper retirement should require ILECs to unbundle dark fiber as a “replacement medium” for retired copper, notwithstanding the Commission’s prior determination in the *Triennial Review Remand Order* that dark fiber loops are not subject to unbundling.¹³² Birch *et al.* propose an outright moratorium on ILEC retirement of copper to business customer locations until the special access rulemaking is concluded.¹³³ NASUCA, for its part, appears to call for a full copper retirement approval process.¹³⁴

The Commission, however, expressly rejected the notion of a copper retirement approval process in the NPRM, finding that “an approval requirement would undesirably harm incentives for fiber deployment,” and that copper retirement therefore “should remain a notice-based process.”¹³⁵ This rejection is consistent with the Commission’s determination more than a decade ago that ILECs are permitted to retire copper facilities when they deploy fiber, subject only to the Commission’s network disclosure rules and the obligation to provide competitors voice-grade (64 kbps) channel access over the fiber.¹³⁶ The Commission should again reject

¹³¹ See NPRM, 29 FCC Rcd at 14976 ¶ 15 (“We recognize the many benefits of fiber-based service and the desirability for incumbent LECs of not having to operate both copper and fiber networks indefinitely . . .”).

¹³² Comptel Comments at 31-33; see also *Triennial Review Remand Order*, 20 FCC Rcd at 2634 ¶¶ 183-84.

¹³³ Birch *et al.* Comments at 32.

¹³⁴ NASUCA Comments at 12, 15-16.

¹³⁵ NPRM, 29 FCC Rcd at 14995 ¶ 56.

¹³⁶ See *Triennial Review Order*, 18 FCC Rcd at 17142 ¶ 273, 17146-47 ¶ 281.

calls for a copper retirement approval process, determining that a less intrusive approach would better spur fiber deployment by both ILECs and competitors.¹³⁷

But even without a formal approval process, onerous copper retirement requirements like those suggested by competitive providers can stymie an ILEC's ability to effectively manage and upgrade its network. The proposed copper forecasting requirement, in particular, raises significant competitive concerns, as such forecasts would often telegraph the ILEC's planned fiber deployment.¹³⁸ Likewise, CenturyLink agrees with Adtran that, even short of an approval requirement, unnecessarily lengthy or burdensome notice requirements could delay copper retirement, and consequently deter fiber deployment.¹³⁹

2. EXPANDED COPPER RETIREMENT NOTICE REQUIREMENTS WOULD MISDIRECT ILEC RESOURCES AND DELAY FURTHER FIBER DEPLOYMENT.

The NPRM acknowledges that, particularly as the migration to fiber-based networks accelerates, "ILECs must be free to superintend their networks and to retire network elements that have been rendered anachronistic, that no longer perform optimally, or that are unduly costly to maintain."¹⁴⁰ Constraints on an ILEC's ability to retire duplicative network plant when deploying next generation facilities would also thwart the pro-investment policies at the heart of the Commission's policy regime. The Commission has previously observed that some of its

¹³⁷ *See id.*

¹³⁸ *See CenturyLink Comments at 35.*

¹³⁹ Adtran Comments at 9. Adtran also correctly observes that the current 90-day copper retirement notice period could actually be reduced to 60 days in instances where facilities, but not services, will be changed. *Id.*

¹⁴⁰ NPRM, 29 FCC Rcd at 14978 ¶ 18 (quoting Reply Comments of AT&T Services, Inc., GN Docket Nos. 13-5 and 12-353, at 42-43 (filed Apr. 10, 2014)).

existing copper retirement and network change rules “may no longer be necessary in the public interest as the result of meaningful economic competition.”¹⁴¹ There is no need to move in the opposite direction today by making the process *more* restrictive or burdensome. Burdensome new notice obligations would stifle fiber deployment almost as surely as a formal approval process.¹⁴²

As to content of any revised wholesale copper retirement notice, other commenters agree with CenturyLink that requiring an ILEC to foretell “any changes in prices, terms, or conditions that will accompany the planned changes” is particularly problematic.¹⁴³ ILECs are not privy to the specifics of all CLEC service offerings, architectures, and terms and conditions. An ILEC can explain the technical details of a proposed modification or retirement, but only the CLEC is in a position to understand what this will mean for the CLEC’s service offerings.

Finally, CenturyLink agrees that the Commission should allow ILECs reasonable flexibility in determining how best to communicate critical information regarding a planned copper retirement, as opposed to adopting a “one size fits all” form notice approach.¹⁴⁴ That flexibility should include allowing the ILEC to determine how to provide any required notice, whether by email, bill notice, U.S. mail, telephone call, in-person meeting/visit or automated

¹⁴¹ See *Commission 2010 Biennial Review of Telecommunications Regulations*, Public Notice, 26 FCC Rcd 16943, 16944 (2011). See also Verizon Comments at 12 (quoting same).

¹⁴² See Adtran Comments at 9.

¹⁴³ NPRM, 29 FCC Rcd at 14995 ¶ 57; see CenturyLink Comments at 34-35 (citation omitted); Verizon Comments at 13 (citation omitted).

¹⁴⁴ See Verizon Comments at 15.

notification.¹⁴⁵ The ILEC is in the best position to determine what method of notice will likely be most effective for each of its wholesale customers.

C. There is No Need for a Formal Copper Retirement Notification Process for Retail Customers.

1. RETAIL CUSTOMERS ALREADY RECEIVE SUFFICIENT NOTICE WHERE IMPACTED.

The NPRM also sought comment on whether the Commission’s Part 51 rules should be extended to require notification to retail customers regarding copper retirements.¹⁴⁶ The Commission stated that “[r]etail customers who are directly impacted by copper retirement need to know about it,”¹⁴⁷ and proposed that notice is required to “anyone who will need new or modified CPE or who will be negatively impacted by the planned network change.”¹⁴⁸ CenturyLink agrees, and, as noted in its initial comments, the company already has in place well-established processes to notify retail customers who are impacted by copper retirement.¹⁴⁹ In addition, as other commenters noted, Section 68.110 of the Commission’s rules already requires written notice to customers of any changes in a carrier’s communications facilities or equipment that can reasonably be “expected to render any customer’s terminal equipment incompatible with the communications facilities of the provider of wireline telecommunications, or require

¹⁴⁵ See *id.*; see also NTCA Comments at 8-9.

¹⁴⁶ NPRM, 29 FCC Rcd 14996-97 ¶ 60.

¹⁴⁷ *Id.* at 14997 ¶ 61.

¹⁴⁸ *Id.*

¹⁴⁹ CenturyLink Comments at 31-33.

modification[s] or alteration[s] of such terminal equipment, or otherwise materially affect its use or performance.”¹⁵⁰

Nothing in the record demonstrates the need for a different approach or a specific rule for retail customers under Part 51 of the Commission’s rules. Retail customers who are *not* directly impacted by copper retirement do not need to know about it, and indeed, overbroad communication of an ILEC’s planned copper retirement will only serve to cause customer confusion, as the Commission recognized.¹⁵¹ In particular, the extension of notification mandates to cover not only an ILEC’s actual retail customers but also the community at large would be unprecedented and unwarranted. The Alarm Industry Communications Committee, for example, contends that ILECs should be required to general notice to the entire community in an area with planned copper retirement, through publication of notice in the general media.¹⁵² Another commenter proposes that ILECs retiring copper facilities should be required to collaborate with local organizations, churches, community centers, and anchor institutions.¹⁵³ Such overly broad notification requirements would only pile additional burdens and costs on the ILEC, dampening deployment efforts. Moreover, broad notifications could be counterproductive, stirring confusion as to whether recipients will be impacted by the planned copper retirement and need to take some action.

¹⁵⁰ 47 C.F.R. § 68.110(b); *see* Communications Workers of America Comments at 9.

¹⁵¹ NPRM, 29 FCC Rcd at 14998 ¶ 62.

¹⁵² Alarm Industry Communications Committee Comments at 8, GN Docket No. 13-5 (Mar. 31, 2014).

¹⁵³ Comments of Karen Fasimpaur, President, K12 Handhelds, Inc., at 3.

If the Commission is nonetheless inclined to adopt a retail copper retirement notification rule, that rule must afford providers reasonable flexibility to effectuate notifications. ILECs themselves are in the best position to determine who and what to communicate to their customers to ensure that the right customers (*i.e.*, those directly impacted) receive the right information. An overly formulaic approach is not warranted, and CenturyLink agrees with commenters who observed that any such requirement should afford ILECs latitude in determining the best method to notify their customers.¹⁵⁴

2. SECTION 251(C) DOES NOT PROVIDE AUTHORITY TO EXTEND COPPER RETIREMENT NOTICE REQUIREMENTS TO RETAIL CUSTOMERS.

As CenturyLink noted in its initial comments, aside from the policy reasons militating against the expansion of copper retirement notification processes to the retail customers, the Commission’s legal authority to require notification to retail customers under Section 251(c)(5) of the Act is highly questionable.¹⁵⁵ 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.”¹⁵⁶ The Commission has historically interpreted this provision to require notice only to interconnecting competitive providers, not retail customers, and this provision exists within Section 251 of the Act, entitled “Interconnection.”¹⁵⁷ Section 251(c)(5) simply cannot be read to support a *retail customer*

¹⁵⁴ NTCA Comments at 8-9; Verizon Comments at 14-17.

¹⁵⁵ CenturyLink Comments at 36-37.

¹⁵⁶ 47 U.S.C. § 251(c)(5).

¹⁵⁷ See CenturyLink Comments at 36-37.

copper notification requirement. As AT&T observed, Section 251 established ILEC obligations with respect to competitive providers, and in defining the ““services”” at issue for purpose of Section 251(c)(5)’s requirements, the Commission discussed “information services providers” and “telecommunications services providers.”¹⁵⁸ Not surprisingly, there was no discussion of retail customer services in the relevant order.¹⁵⁹

IV. THERE IS NO BASIS FOR SUBJECTING SERVICE PROVIDERS TO CPE BACKUP POWER MANDATES.

The opening comments reflect a general appreciation for the importance of continuity of CPE power as customers migrate to networks and services that depend on power supplied at the customer premises rather than from a central office. CenturyLink shares this appreciation. Indeed, CenturyLink has described the voluntary steps it takes to ensure that consumers are educated about the issue of backup power and have access to backup power options as they migrate to newer communications technologies.¹⁶⁰ Other service providers do likewise.¹⁶¹

While some commenters urge the Commission to go beyond such market-driven initiatives by adopting rules that would force one particular class of service providers (ILECs) to bear primary responsibility for the provision of backup power,¹⁶² there is no evidence that such mandates are necessary to protect consumers or even consistent with their preferences. On the

¹⁵⁸ AT&T Comments at 37, discussing *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, 19473 ¶ 176 (1996).

¹⁵⁹ *Id.*

¹⁶⁰ See CenturyLink Comments at 48-49.

¹⁶¹ See, e.g., Verizon Comments at 17-18 (describing illustrative backup power solutions offered by various providers).

¹⁶² See, e.g., Public Knowledge *et al.* Comments at 24-28.

contrary, the record shows – and the NPRM acknowledges – that the substantial majority of consumers are choosing to forego the use of self-powered ILEC offerings in favor of alternatives that are not self-powered but offer other advantages that consumers value more highly, such as mobile phones, or interconnected VoIP or Wi-Fi-enabled VoIP from cable operators that employ battery backup.¹⁶³ Even ILEC service subscribers often use cordless phones, which rely on customer-supplied batteries that exhaust quickly if they cannot be recharged using AC power. Meanwhile, those consumers who do value backup power are able to find solutions in the marketplace that fit their specific needs.

Reinserting service providers into this supply chain as presumptive sources of backup power would disregard consumer preferences without yielding any offsetting benefit, because service providers are ill-equipped for that role. Although ILECs historically supplied electrical power through central office connections, they did so as an incidental aspect of their traditional telephone services and solely by virtue of the nature of legacy TDM network architecture. And as CenturyLink and others have explained, even during that era, the Commission decoupled the provision of CPE and services, inviting customers to look to third parties for their equipment and facilitating the diverse options that now exist.¹⁶⁴ Service providers today thus are in no position to know what type of backup power solutions their customers need or want, let alone whether (and when) they want them in the first place—which is precisely what consumers have come to expect. Consumers will be better served if they can retain control over how their backup power needs are met, rather than outsourcing that function to one particular player in the communications ecosystem.

¹⁶³ *See, e.g.*, NPRM, 29 FCC Rcd at 14969 ¶ 3, 14987 ¶ 33.

¹⁶⁴ *See, e.g.*, CenturyLink Comments at 45-46.

Accordingly, the most effective path toward meeting the NPRM’s goals with respect to backup power is for the Commission to endorse the best practices recently recommended by the CSRIC.¹⁶⁵ As CenturyLink and others have explained, CSRIC Working Group 10 has recommended best practices regarding backup power requirements.¹⁶⁶ For example, the Best Practices urge service providers to make affordable backup power options available to consumers.¹⁶⁷ They further recommend that voice service providers educate customers 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),¹⁶⁸ and call for service providers to offer users information about where and how to secure backup power functionality for such CPE.¹⁶⁹ Service providers are already implementing CSRIC’s Best Practices in many respects. As various parties suggest, the Commission should allow this voluntary process to unfold before considering a more interventionist approach.¹⁷⁰

¹⁶⁵ CenturyLink Comments at 46-48.

¹⁶⁶ CSRIC IV Working Group 10B, CPE Powering – Best Practices; Final Report (Sept. 2014), <http://transition.fcc.gov/pshs/advisory/csr4/CSRIC%20WG10%20CPE%20Powering%20Best%20Practices%20Final%20Draft%20v2%20082014.pdf> (“CSRIC Report”).

¹⁶⁷ *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.

¹⁶⁸ *See, e.g.*, CSRIC Report at 13-14 & 20-21.

¹⁶⁹ *See, e.g.*, CSRIC Report at 21-22 (New Best Practice Number 18).

¹⁷⁰ *See, e.g.*, AT&T Comments at 13 (“AT&T recommends that the Commission encourage all IP-based service providers to review and, when appropriate, adopt these backup power best practices, especially those dealing with consumer education.”); Fiber-to-the-Home Council Americas Comments at (in light of the CSRIC recommendations, “the Commission should not

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. It should reject overly burdensome discontinuance requirements and mandates that would impair the development and deployment of new IP-based offerings, and should rely on customer choice and the well-functioning CPE market rather than regulatory mandates in addressing questions regarding backup power.

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impose its proposed regulations, which are unnecessary and would only serve to increase costs and even possibly tip the balance against all fiber deployments,” and instead encourage providers “to enable reliable backup power and monitor developments in the market for backup power solutions”); Reply Comments of NTCA – The Rural Broadband Association at 7 (filed March 9, 2015) (“While the Commission should *encourage* providers to adopt the CSRIC backup power consumer education best practices, providers should have the flexibility to tailor them based on their experience in serving their respective customer bases.”).