

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

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

**Comments of
Communications Workers of America
*Further Notice of Proposed Rulemaking***

Debbie Goldman
George Kohl
501 Third St. N.W.
Washington, D.C. 20001
(202) 434-1194 (phone)
(202) 434-1201 (fax)
dgoldman@cwa-union.org

Scott Rubin
Counsel to CWA
333 Oak Lane
Bloomsburg, PA 17815
(570) 387-1893
scott.j.rubin@gmail.com

October 20, 2015

Table of Contents

I.	Introduction and Summary.....	1
II.	The Commission’s Proposed Criteria for Discontinuance Rules Are Necessary to Promote Universal Service, Consumer Protection, Public Safety and National Security, and Competition.....	3
III.	The Commission Should Require a Minimum of 180 Days’ Advance Notice to Retail and Wholesale Customers; Require a Comprehensive Consumer Education Program.....	13
IV.	The Commission Must Be Vigilant in Enforcement of the Section 214 Discontinuance Notice and Application Process for <i>de facto</i> Service Discontinuance, Reduction, and Impairment.....	15
V.	Conclusion.....	22

I. Introduction and Summary

The Communications Workers of America (“CWA”) submits these comments in response to the Commission’s *Further Notice of Proposed Rulemaking* (“FNPRM”) seeking additional comment on specific proposals for criteria to evaluate a Section 214 service discontinuance application.¹ CWA represents 700,000 workers in communications, media, airlines, manufacturing and public services. CWA members work in all sectors of the communications industry, including wireline, wireless, and video. A significant proportion of CWA members work for companies that the Commission, in this proceeding, identifies as incumbent local exchange carriers, companies that have transformed themselves into broadband, and in some cases, video and wireless providers. CWA members, as workers and consumers of communications services, have a deep interest in this proceeding. Since 2007, CWA’s Speed Matters campaign has promoted policies to advance affordable high-speed Internet to all Americans.²

CWA agrees with the Commission that the adoption of clear, bright-line criteria to use in evaluating Section 214 service discontinuance applications will provide necessary clarity to carriers as they move forward with the technology transitions that are already underway.³ Most important, the adoption of clear, targeted, technology-neutral Section 214 criteria are necessary to ensure that even as communications technologies change, the fundamental goals of communications policy remain the same: universal service, consumer protection, public safety

¹ *In the Matter of Technology Transitions et al*, GN Docket No. 13-5, WC Docket No. 05-25, RM-10593, RM-11358, Further Notice of Proposed Rulemaking, Aug. 7, 2015 (rel) (“FNPRM”); FCC Public Notice, “Wireline Competition Bureau Announces Comment and Reply Comment Dates for the Emerging Wireline Networks and Services Further Notice of Proposed Rulemaking,” GN Docket No. 13-5, WC Docket No. 05-25, RM-10593, RM-11358, Sept. 25, 2015.

² See <http://www.speedmatters.org>

³ FNPRM, ¶ 203.

and national security, and competition.⁴ CWA adds to that list the critical role that a skilled, career communications workforce, one with workers' rights and protections on the job, plays in advancing the Commission's core values.

CWA supports the eight criteria proposed by the Commission to evaluate whether alternative technologies constitute adequate substitutes for legacy services. The criteria are: 1) network capacity and reliability; 2) service quality; 3) device and service interoperability; 4) service for individuals with disabilities; 5) PSAP and 911 service; 6) cybersecurity; 7) service functionality; and 8) coverage.⁵ As part of its evaluation of service quality, the Commission should consider a carrier's workforce to determine whether the carrier employs a skilled workforce capable of delivering quality service to customers and whether a carrier upholds the highest standards of labor rights. Certainly, a provider that has been found in violation of labor law should not be considered an adequate substitute. In addition to these eight criteria, CWA urges the Commission to give particular weight to the issue of affordability in its evaluation of a Section 214 service discontinuance application. Consumers do not consider service alternatives that cost significantly more than existing services delivered over legacy technologies as adequate substitutes.

In these comments, CWA reiterates and expands upon the extensive information we provided to the Commission in the *Copper Retirement* proceeding. CWA respectfully requests that our submissions in that proceeding be incorporated into this further rulemaking proceeding.⁶

⁴ *Technology Transitions, et al.*, GN Docket No. 13-5 et al., Report and Order and Further Notice of Proposed Rulemaking, Jan. 31, 2014 (rel), ¶ 1 (“*Copper Retirement Order*”).

⁵ *FNPRM*, ¶ 208, 216-233.

⁶ Communications Workers of America Comments, *Technology Transitions et al.*, GN Docket No. 13-5, WC Docket No. 05-25, RM-11358, RM-10593, PS Docket No. 14-174, Feb. 5, 2015 (“CWA Comments”), CWA Reply Comments, *Technology Transitions et al.*, GN Docket No. 13-5 et al., March 9, 2015 (“CWA Reply Comments”);

II. The Commission's Proposed Criteria for Discontinuance Rules Are Necessary to Promote Universal Service, Consumer Protection, Public Safety and National Security, and Competition

Section 214 of the Communications Act requires carriers to obtain prior Commission approval of any discontinuance, reduction, or impairment of service to all or a portion of a community. Specifically, Section 214(a), 47 U.S.C. § 214(a), provides in relevant part:

No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, or partial discontinuance, reduction, or impairment of service, without regard to the provisions of this section. ... Provided, however, That nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided.

In evaluating a Section 214 service discontinuance application, the Commission considers, among other factors, 1) whether customers or other end users are able to receive the service or a reasonable substitute from another carrier; 2) whether the public convenience and necessity is otherwise adversely affected; 3) the need for the service; 4) the need for the particular facilities; 5) the existence, availability, and adequacy of alternatives; and 6) increased charges for alternative services.⁷ This multi-factor analysis provides the proper framework for the evaluation of a Section 214 service discontinuance application. Further, as the Commission emphasized in the *Copper Retirement Order*, carriers that engage in *de facto* service discontinuance (and copper retirement) due to their failure to repair and maintain facilities to

Letter from Debbie Goldman, CWA Telecommunications Policy Director to Ms. Marlene Dortch, Secretary, FCC, June 24, 2015 (and attachments) (“CWA June 24, 2015 Ex Parte Letter”).

⁷ *FNPRM* ¶206 fn656; See also FCC, *Public Notice*, “Comments Invited on Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services,” WC Docket No. 13-150, Comp. Pol. File No. 115, June 28, 2013.

such an extent that service is reduced, impaired, or discontinued are subject to the Commission's copper retirement notice requirements and must file a Section 214 application.⁸

In the *FNPRM*, the Commission seeks to define what would constitute an “adequate substitute for retail services” when a carrier seeks to discontinue, reduce or impair a service in connection with a technology transition. CWA supports the Commission proposal, beginning in paragraph 208 of the *FNPRM*, to adopt the following eight criteria:⁹

1. Network capacity and reliability
2. Service quality
3. Device and service interoperability, including interoperability with vital third-party services (through existing or new devices)
4. Service for individuals with disabilities; including compatibility with assistive technologies
5. PSAP and 9-1-1 service
6. Cybersecurity
7. Service functionality
8. Coverage

In addition to these eight criteria, CWA urges the Commission to give substantial weight to the issue of affordability as it evaluates a Section 214 application. We strongly disagree with the Commission's tentative conclusion that affordability should be excluded from the “adequate substitute” criteria.¹⁰ Consumers certainly weigh the cost of an alternative technology when

⁸ *Technology Transitions et al*, GN Docket No. 13-5 et al., Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, Aug. 7, 2015 (rel), para. 92. (“We remind carriers that where they neglect copper facilities in a manner that constitutes *de facto* retirement, any resulting loss of service may constitute a discontinuance, reduction, or impairment of service for which a section 214(a) application is necessary. The copper retirement network change notification process and the discontinuance approval process remain fundamentally distinct because the former concerns changes in facilities and merely requires notice, while the latter concerns changes in services and requires Commission approval. However in those instances where a de factor copper retirement also results in discontinuance, we expect carriers in such a situation to file both a notice and an application.”)

⁹ These criteria are similar to those CWA proposed in our initial comments (reliable accurate access to E911; constant availability; adequate call quality; compatibility with health and safety services that use the network; adequate data transmission capability, and affordable to consumers.) CWA Comments, GN Docket 13-5 et al, at 12, Feb. 6, 2015.

¹⁰ *FNPRM*, 234.

deciding whether or not to switch technologies or carriers; a substantially more expensive service is *not* an adequate or reasonable substitute for a discontinued, reduced, or impaired service. For example, under current pricing models for wireless and satellite service, including data caps on wireless broadband and the high cost of most satellite-based Internet access, many consumers would not consider those alternatives as an adequate substitute for wireline DSL with unlimited data.

Moreover, Section 254 of the Communications Act requires the Commission to ensure that "quality services should be available at just, reasonable, and affordable rates" to all consumers.¹¹ As the Commission recently explained, it is vitally important that in making decisions, the Commission be able to ensure that its actions are consistent with universal service principles, including the deployment "'in all regions of the Nation' networks capable of providing affordable voice and broadband services that are reasonably comparable -- in terms of rates and quality -- to voice and broadband in urban areas."¹² Similarly, when the Commission issued a notice regarding the evaluation of reasonable alternatives to telecommunications relay and related services, the Commission specifically recognized the importance of affordability in determining whether a service was an adequate substitute, asking: "Are such services generally available and affordable, and are these adequate substitutes ...?"¹³

Thus, the affordability of service to consumers within a community must be considered one of the essential elements of telecommunications service. If the service is not affordable, then the Commission and carriers have failed to meet their obligations to provide ubiquitous, high-

¹¹ 47 U.S.C. § 254(b)(1); see also 47 U.S.C. § 254(i).

¹² *In re Connect America Fund, Universal Service Reform - Mobility Fund et al.*, 29 FCC Rcd 7051, 7093 (F.C.C. June 10, 2014).

¹³ *In re TRS Services for Individuals with Hearing and Speech Disabilities*, 28 FCC Rcd 13514, 13527 (F.C.C. Sept. 5, 2013).

quality telecommunications service throughout the United States. As the Commission has stated: "The 'ubiquity and reliability of the nation's telecommunications network' are critical to ensuring the nationwide availability of dependable telephone service. One of the seminal objectives of the Communications Act is 'to make available, so far as possible, to all the people of the United States, . . . a rapid, efficient, Nation-wide and world-wide wire and radio communication services with adequate facilities.'"¹⁴ In making that statement, the Commission specifically noted the requirements of Section 254(b), which it recognized directed the Commission "to adopt policies that preserve and advance universal access to reliable and affordable telecommunications and information services."¹⁵ In sum, we urge the Commission to give significant weight to the issue of affordability both in the context of an "automatic grant" situation and in a more comprehensive evaluation in response to comments or objections.¹⁶

In the section below, we provide additional information regarding the Commission's eight proposed criteria for the "adequate substitute" test.

1. Network Capacity and Reliability. This requirement means that whenever a consumer needs to make a call, access the Internet, or otherwise use the network, the network is available. Some state utility regulators have standards that require minimum levels of performance for voice communications. For example, the Pennsylvania Public Utility Commission requires the following minimum levels of service during peak periods: 98 percent of calls provided a dial tone within three seconds, 97 percent of correctly dialed intraoffice calls are completed, and 96 percent of correctly dialed interoffice calls are completed. CWA submits that the ability to access

¹⁴ *In re Petition for Declaratory Ruling of Securus Technologies, Inc.*, 28 FCC Rcd 13913, 13916 (F.C.C. Sept. 26, 2013) (footnotes omitted)

¹⁵ *Id.*, fn. 26.

¹⁶ *FNPRM*, ¶ 201.

a dial tone within three seconds 98 percent of the time during the busy season - busy hour should be the minimally acceptable level of service for a network. A substantially similar standard already is used for wireline networks in at least 17 other states.¹⁷ (See Attachment 1. State Telephone Call (Loop) Service Quality Standards.)

In addition to standards for voice service, the Commission should adopt standards for data communications, including metrics for jitter, packet loss, and through-put. An “adequate substitute” should be able to provide comparable or better digital communications. The Commission has proposed that the required metrics be based on the defined standards for various classes of service in ITU-T Y.1541, adjusted for the portion of the network that is the responsibility of the provider, as well as “reachability” tests such as those used in the FCC’s Measuring Broadband America program.¹⁸ CWA sees merit in the use of these metrics to evaluate the quality of data communications provided by alternative or substitute technologies or providers.

2. Service Quality. Consumers expect their voice communications to be clear, understandable, and free of distortion and their data connections to be sufficiently robust and reliable to access the video- and data-intensive applications on today’s Internet. In addition to the metrics discussed above, CWA provides additional guidance to the Commission. Regarding

¹⁷ CWA Comments, GN Docket No. 13-5 et al, 15 and fn 20 (citing 52 Pa. Code § 63.61.) Citations for the other states that have the same, or substantially similar, standard (98% of attempts within 3 seconds) for providing adequate dial tone service. See Ala. Admin. Code r. 770-X-5-.21; 3 Alaska Admin. Code 52.310 (98.5%); Code of Dela. Regs. 26-4000-4003; Ga. Comp. Rules & Regs. r. 515-12-1-.18; Code of Hawaii Regs. 6-80; 199 Iowa Admin. Code 22.5; Code of Md. Regs. 20.45.05.04 (98.5% year-round and 95% during busy hour); Minn. Rules 7810.5300; Mont. Admin. Rules 38.5.3371; Neb. Admin. Code Title 291, Ch. 5; 17.11.22.17 N. Mex. Admin. Code; Ore. Admin. Rules 860-023-0055; Admin. Regs. of S. Dak. 20:10:33:05; Tenn. Comp. Rules & Regs. R. 1220-4-2-.37; 16 Tex. Admin. Code § 26.54 (98% year round and 96% in busy hour); Utah Admin. Code R746-340-7; Wash. Admin. Code § 480-120-401). *See also* Letter from Debbie Goldman, CWA Telecommunications Policy Director, to Ms. Marlene Dortch, Secretary, Federal Communications Commission, GN Docket No. 13-5 et al, June 24, 2015, Attachment 2. State Telephone Call (Loop) Service Quality Standards.

¹⁸ *FNPRM* ¶ 217.

voice communications, several states have adopted standards that can serve as a model for this Commission to set minimum call quality standards. For example, the Regulatory Commission of Alaska has the following requirement:

Telephone utilities shall furnish and maintain in their service areas the necessary plant, equipment and facilities to provide modern, adequate, sufficient and efficient transmission of communications for any given grade of service between customers. Transmission for a given grade of service must be at adequate volume levels and free of excessive distortion. Levels of noise and cross-talk must not impair communications. The loss objective of trunks must be consistent with the requirements of the nationwide switching plan, and overall transmission losses within each trunk group may not vary by more than plus or minus two decibels.¹⁹

Similar standards exist in other states.²⁰

As part of its evaluation of service quality, the Commission should consider a carrier's workforce to determine whether the carrier employs a skilled workforce capable of delivering quality service to customers and whether a carrier upholds the highest standards of labor rights. Certainly, a provider that has been found in violation of labor law should not be considered an adequate substitute.

CWA strongly supports TelePacific's suggestion to include additional metrics such as trouble/repair reports (including repeat trouble/repair reports), which it accurately describes as a "key metric to determine whether incumbent LECs are fixing their plant, or in compliance with [certain] Telecordia Standards."²¹ As CWA emphasized in our comments in the *Copper Retirement proceeding*, good policy requires good data, yet the Commission's misguided cancellation of its ARMIS service quality data collection program deprives the Commission of the information it needs to ensure that

¹⁹ 3 Alaska Admin. Code 52.260.

²⁰ See, e.g., Ala. Admin. Code r. 770-X-5-.21; Ga. Comp. Rules & Regs. r. 515-12-1-.23; 199 Iowa Admin. Code 22.5; Code of Md. Regs. 20.45.05.06; Minn. Rules 7810.5500; Neb. Admin. Code Title 291, Ch. 5; 52 Pa. Code § 63.63.

²¹ Citation in *FNPRM* ¶218 and fn. 679.

the technology transition protects the enduring values of consumer protection, public safety, competition, and universal quality service. When the Commission began to forbear from ARMIS service quality data collection, the Commission issued a Further Notice of Proposed Rulemaking with the purpose of adopting industry-wide reporting requirements. However, the Commission has failed to move forward with that rulemaking, and beginning in 2010, over objections from consumer organizations, state regulators, and CWA, discontinued the service quality data collection program. As a result, there is no objective, national base of information to evaluate the quality of service that telecommunications and broadband consumers receive. Most state regulatory commissions either no longer require service quality reporting or do not make this information available to the public. To fill this critical gap, the Commission should move forward with a proceeding to adopt an industry-wide service quality data collection program that includes information on trouble and out-of-service reports, service and installation intervals, and customer complaints. All telecommunications and broadband providers should be subject to the service quality data collection program.²²

Regarding data communications, in addition to the metrics noted above, an adequate substitute service must provide access to data communications that meets the FCC broadband definition, which today is set at 25 megabits per second (Mbps) for downloads and 3 Mbps for uploads.²³ As Chairman Tom Wheeler has stated: “meaningful competition for high-speed wired broadband is lacking and Americans need more competitive choices for faster and better connections, both to take advantage of today’s new services, and to incentivize the development of tomorrow’s

²² See CWA Comments, GN Docket No. 13-5 et al, 34-38.

²³ *Inquiry Concerning the Deployment of Advanced Telecommunications Capacity to All Americans*, GN Docket Nos. 12-228 and 14-126, Feb. 4, 2015 (rel).

innovations.”²⁴ The Commission must ensure that consumers’ competitive choice for broadband transmission at 25/3 Mbps is not reduced as a result of a Section 214 service discontinuance.

3. Device and Service Interoperability. Consumers rely heavily on the ability of other services and devices to operate in conjunction with the telecommunications network. Some of those devices are essential to public health and safety. These include, for example, security alarms, medical alert services, and devices to assist deaf and hearing-impaired people to communicate with others. In addition, business consumers often rely on the network to work seamlessly with devices that are essential to their business operations, such as fax machines and credit card interfaces. The Commission should ensure that the functions provided by these devices and services will not be discontinued, reduced, or impaired in its evaluation of a service discontinuance application.

4. Service for Individuals with Disabilities. CWA fully supports the Commission proposal that the adequate substitute test require carriers to demonstrate that its replacement service or alternatives available from other providers provides at least the same accessibility, usability, and compatibility with assistive technologies as the service being discontinued.²⁵

5. PSAP and 911 Service. A critically important part of an availability standard is to ensure that dial tone remains available during storms, emergencies, and extended electricity outages. In the *Back-Up Power Order*, the Commission adopted standards requiring carriers that use technologies that do not provide line power to make available to consumers a minimum of eight hours back-up power, increasing to 24 hours within three years.²⁶ Compliance with these

²⁴ Prepared remarks of FCC Chairman Tom Wheeler, “The Facts and Future of Broadband Competition,” 1776 Headquarters, Washington, D.C., Sept. 4, 2014 (available at <http://www.fcc.gov/document/chairman-remarks-facts-and-future-broadband-competition>).

²⁵ *FNPRM* ¶¶ 222-224.

²⁶ *Ensuring Continuity of 911 Communications*, Report and Order, PS Docket No. 14-174, Aug. 6, 2015.

provisions is essential when conducting an adequate substitute evaluation. Moreover, any substitute service should not only comply with applicable state, tribal, and federal 911 regulations, it must also provide comparable – or better – 911 functionality. The Commission is well aware that wireless networks do not provide accurate indoor location accuracy.²⁷ In addition, as the Commission learned during Superstorm Sandy, wireless networks do not have the back-up power and redundancy to assure 911 network reliability.²⁸ The Commission should carefully evaluate the 911 performance of alternative service providers to determine whether their 911 and PSAP service constitute adequate substitutes for legacy services.

6. Communications Security. Network security and privacy protections are critical components of our communications services and networks, and the Commission must include an evaluation of alternative services' ability to meet the highest standards on these measures in its evaluation criteria.²⁹ For example, Congress has raised serious concerns about potential security problems associated with the penetration of Chinese equipment giants such as Huawei

²⁷ On January 29, 2015, the Commission adopted a plan that would require only 40 percent of E-911 calls from wireless phones to provide accurate location information in multi-unit buildings, but with a goal of improving that accuracy to 60 percent by 2020. Even with that improvement, however, it still would mean that two out of every five wireless calls from multi-unit buildings might not be accurately located. See "FCC Wireless Location Accuracy Rules Moving Closer to Proposed Road Map," *Communications Daily*, Jan. 28, 2015; FCC Press Release, "FCC Adopts Rules to Help Emergency Responders Better Local Wireless 911 Callers," Jan. 29, 2015.

²⁸ Roughly one in four cell towers were inoperable during Superstorm Sandy. On December 12, 2013, the Commission adopted 911 network reliability rules that merely require annual certification that carriers are meeting industry "best practices" regarding back-up power at cell sites, network diversity, and other measures. Because the first reporting period begins in fall 2015, it is not yet clear whether this requirement will be sufficient to ensure wireless 911 network reliability. See *Improving 911 Reliability et al*, Report and Order, PS Docket Nos. 13-75 and 11-60, Dec. 12, 2013 (rel).

See also Comments of Communications Workers of America in WC Docket No. 13-150 and Comp. Pol. File No. 1115 (July 24, 2013), pp. 11-12, citing a customer who was forced to switch to wireless services after Superstorm Sandy and complained about poor service quality and "our cost for phone and internet service has more than tripled."

²⁹ *FNPRM* ¶¶ 227-228.

Technologies Company in networks and such concerns should be carefully scrutinized as part of an adequate substitute test.³⁰

7. Service Functionality. The Commission correctly concludes that the adequate substitute test must include an evaluation of whether alternative services permit similar service functionalities for services that consumers have come to expect.³¹ When Verizon Communications Inc. attempted to substitute its inferior fixed wireless Voice Link service for landline service on Fire Island NY, consumers made it clear that they do not regard Voice Link as a substitute for wireline service because Voice Link does not enable Internet access; the use of fax machines, credit card, and other payment systems; compatibility with alarm systems, health monitors, and other third-party customer premise equipment; and other calling features such as caller ID, call waiting, voice mail, and other calling features.³² While CWA recognizes that IP-based services may require customers to purchase IP-compatible customer premise equipment to receive the service functionalities of a discontinued TDM or landline service, the Commission must ensure in its adequate substitute test that alternatives are available to provide similar service functionalities as those provided by the legacy service.

8. Coverage. CWA supports the Commission proposal that the alternative services must be available in all the affected service area to all persons, businesses, and organizations to whom the discontinued service is available. Section 214 expressly states that a carrier must ensure that service is not discontinued, reduced, or impaired to a "community, or part of a community"

³⁰ See Report by Chairman Mike Rogers and Ranking Member C.A. Dutch Ruppersperger of the Permanent Select Committee on Intelligence, "Investigative Report on the U.S. National Security Issues Posed by Chinese Telecommunications Companies Huawei and ZTE," Oct. 8, 2012.

³¹ *FNPRM* ¶¶ 29-230.

³² See CWA Comments, Application of Verizon New York and Verizon New Jersey to Discontinue Telecommunications Service, WC Docket No. 13-150 and Comp File No. 1115, July 24, 2015, 10-14 and especially Appendix C. Voice Link Public Comments and Appendix D. First Responders Letter.

without prior Commission approval. In urban areas, a telecommunications "community" could be defined by the wire center. In rural areas, however, a single wire center might serve numerous distinct municipalities or unincorporated areas. To ensure compliance with Section 214 - which requires the Commission to make an evaluation for each part of a community - CWA believes it would be reasonable to evaluate the discontinuance, reduction, or impairment of service at the smallest feasible unit.

In summary, in its evaluation of the adequate substitute test, the Commission should adopt the eight characteristics that it has proposed plus a ninth criterion regarding affordability. In its evaluation of service quality, the Commission must ensure that the alternative service is delivered by a skilled workforce and should make clear in its criteria that a service provider that has been found in violation of labor law is not an adequate substitute. These service functionalities should be available without regard to the technology or physical facilities used by the carrier. Most important, the Commission must ensure that discontinuance, reduction, or impairment of a legacy wireline service does not result in a smaller number of carriers providing voice and data connections to retail and wholesale consumers. Chairman Tom Wheeler's mantra of "competition, competition, competition" should apply, particularly in the evaluation of a Section 214 application for discontinuance, reduction, or impairment of a wireline TDM service.

III. The Commission Should Require a Minimum of 180 Days' Advance Notice to Retail and Wholesale Customers; Require a Comprehensive Consumer Education Program

As the Commission learned during the DTV transition, a major change in technology can be achieved with minimal disruption when accompanied by a comprehensive consumer education program and adequate advance notification of the change. The discontinuance of a legacy wireline service is at least as significant as the DTV transition. Therefore, the

Commission should require carriers that propose to discontinue landline service to a community or part of a community to develop and implement a comprehensive consumer education and outreach program, one that pays particular attention to ensure that the most vulnerable consumers (the elderly, people with disabilities, low-income) are fully informed and supported.³³

Consumers need sufficient advance notice about proposed changes and adequate time to prepare for major technology transitions. The Commission recently updated its copper retirement rules to require 90 days advance notice to retail customers and 180 days advance notice to interconnecting wholesale customers, based on the reasoning that this strikes a reasonable balance between carriers' needs to move forward expeditiously with new technology and customers' needs to plan for the new technology.³⁴ The rationale is even stronger when a legacy carrier seeks to discontinue landline TDM-based service to a community or part of a community. When a landline TDM service is discontinued, consumers need enough time to research alternative service options, comparative shop, update customer premise equipment, and learn how to use new devices. This process takes time. Already we have seen enormous customer dissatisfaction and confusion as Verizon replaces copper landlines with fiber.³⁵ Therefore, CWA recommends that the Commission do better than merely align its service discontinuance advance notice requirements with its copper retirement rules, but, in the case of a Section 214 landline discontinuance application, extend the advance notice requirement for retail customers to the same 180 days required for wholesale customers. In addition, CWA recommends that the

³³ AT&T has put in place a consumer education program as part of its IP Transition trials in Carbon Hill AL and DelRay FL. *See Technology Transitions et al*, AT&T Proposal for Wire Center Trials, GN Dockets 13-5 and 12-353, Feb. 27, 2014 and AT&T quarterly reports on the Wire Center Trials.

³⁴ FNPRM ¶ 238.

³⁵ *See* CWA Comments, GN Docket No. 13-5 et al., at 22-32; *see also* New Jersey Division of Rate Counsel Notice of Ex Parte, GN Docket No. 13-5 et al., Aug. 4, 2015; Xchange Telecom LLC Notice of Ex Parte, GN Docket No. 13-5 et al., July 21, 2015.

Commission extend the “automatic grant” timeline by an additional 30 days to allow 60 days for non-dominant carriers and 90 days for dominant carriers. The public needs to have adequate time to assess the impact of a Section 214 discontinuance application and to prepare public comments.

IV. The Commission Must Be Vigilant in Enforcement of the Section 214 Discontinuance Notice and Application Process for *de facto* Service Discontinuance, Reduction, and Impairment

In the *Copper Retirement* proceeding, the Commission made it abundantly clear that carriers that engage in *de facto* copper retirement and *de facto* service discontinuance must comply with the Commission’s copper retirement and service discontinuance rules. In the *Copper Retirement Order*, the Commission reminded carriers:

[that] where they neglect copper facilities in a manner that constitutes *de facto* retirement, any resulting loss of service may constitute a discontinuance, reduction, or impairment of service for which a section 214(a) application is necessary. The copper retirement network change notification process and the discontinuance approval process remain fundamentally distinct because the former concerns changes in facilities and merely requires notice, while the latter concerns changes in services and requires Commission approval. However, in those instances where a *de facto* copper retirement also results in discontinuance, we expect carriers in such a situation to file both a notice and an application.³⁶

In the *Copper Retirement* proceeding, CWA presented powerful evidence that Verizon is engaged in *de facto* copper retirement and discontinuance, particularly in those areas of its landline footprint where it has not upgraded its copper network to fiber. We emphasized that Verizon Communications (“Verizon”) is the poster child for *de facto* copper discontinuance, neglecting copper and copper-network customers in the non-FiOS areas in its local exchange footprint, leaving as many as eight million urban and rural customers in these areas with poor voice and slow or no broadband service.³⁷

³⁶ *Copper Retirement Order* ¶ 92.

³⁷ See CWA Comments, GN Docket No. 13-5 et al., at 22-32; CWA Reply Comments, GN Docket No. 13-5 et al., at 6, Mar. 9, 2015; CWA Letter, GN Docket No. 13-5, June 24, 2015, especially Attachment 3.

In response to the extensive evidence that CWA provided to the Commission regarding Verizon's *de facto* retirement/discontinuance of its traditional landline network, Verizon filed a letter on July 15, 2015 stating that since 2008 Verizon has spent "more than \$200 million on its copper network."³⁸ In a September 23, 2015 letter, Verizon attempted to clarify that statement, noting that "more than \$200 million" referred only to capital investments spent on proactive rehabilitation of copper facilities and related support elements (cable, air pressure, batteries, etc.).³⁹

Verizon's attempt at clarification remains vague, inconsistent, and inadequate. Even taking Verizon's statement at face value, \$200 million – or an average of \$28.6 million per year – is a paltry amount to spend on proactive rehabilitation of copper facilities over a seven-year period on a network that covers the vast majority of the population in eight states: New York, Massachusetts, Rhode Island, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, plus Washington, D.C., and parts of California, Texas, and Florida. (Prior to 2010, the Verizon footprint included an additional 4.8 million lines in 14 additional states.)⁴⁰ Rather than use revenue received from copper network customers to deliver quality service over a well-maintained network, it appears that Verizon uses that revenue to invest in its wireless network and boost shareholder return.

Recently, thirteen mayors in cities across Verizon's core footprint wrote Verizon Chairman and Chief Executive Officer Lowell McAdam with concerns that "Verizon is

³⁸ Letter from Maggie McCreedy, Vice President, Verizon Regulatory Affairs to Ms. Marlene H. Dortch, Secretary, FCC, *Technology Transitions et al.*, GN Docket No. 13-5, RM-11358, July 15, 2015.

³⁹ Letter from Maggie McCreedy, Vice President, Verizon Regulatory Affairs to Ms. Marlene H. Dortch, Secretary, FCC, *Technology Transitions et al.*, GN Docket No. 13-5, RM-11358, Sept. 23, 2015.

⁴⁰ Letter from Debbie Goldman, CWA Telecommunications Policy Director to Ms. Marlene H. Dortch, Secretary, FCC, *Technology Transitions et al.*, GN Docket No. 13-5 et al., Oct. 9, 2015.

abandoning the copper network and traditional landline customers are experiencing frequent service outages, delays in repairs and installations, and forced migration to the inferior VoiceLink product.” The mayors also noted that Verizon has either failed to meet its FiOS deployment deadlines or refused altogether to build FiOS in their cities.⁴¹ (See Attachment 2.)

Consumers, business owners, and elected officials echoed these sentiments in nine public hearings held throughout New York in recent months. New York Public Service Commission Chair Audrey Zibelman summed up the public testimony at the hearings this way: [T]here is substantial concern that we’re hearing at our public statement hearings ... [about] the quality of telecommunication service in New York.” NY PSC staff explained that “at nearly every public statement hearing that we conducted over the last several months...numerous concerns and problems were brought to our attention by customers being served by Verizon’s copper network.”⁴² A New York City Department of Information Technology and Telecommunications audit of Verizon’s FiOS build concluded that Verizon failed to meet its franchise obligations to build its all-fiber network throughout the city by the end of 2014.⁴³

Further evidence of Verizon *de facto* retirement/discontinuance policies and practices is found in a survey that CWA conducted of union members who are outside plant technicians working for Verizon in New York, Pennsylvania, New Jersey, Delaware, Maryland, and Virginia. In order to assess for pending negotiations the impact of Verizon repair and

⁴¹ Letter from Mayor Bill De Blasio (New York), James Kenney (Democratic Candidate for Mayor, Philadelphia), Mayor William Peduto (Pittsburgh), Mayor Ras Baraka (Newark NJ), Mayor Steven M. Fulop (Jersey City NJ), Mayor Byron Brown (Buffalo NY), Mayor Stephanie Miner (Syracuse NY), Mayor Joseph M. Petty (Worcester MA), Mayor Jose Torres (Paterson NJ), Mayor Rodney M. Elliot (Lowell MA), Mayor Kathy Sheehan (Albany NY), Mayor Bill Carpenter (Brockton MA), Mayor Eric E. Jackson (Trenton NJ), Mayor Daniel Rizzo (Reverse MA) to Mr. Lowell McAdam, Chairman and Chief Executive Officer, Verizon Communications, Oct. 1, 2015.

⁴² William J. Kemble, “Verizon’s landline service record worries N.Y. state Public Service Commission,” *Daily Freeman News*, Sept 17, 2015 (available at <http://www.dailyfreeman.com/general-news/20150917/verizons-landline-service-record-worries-ny-state-public-service-commission>).

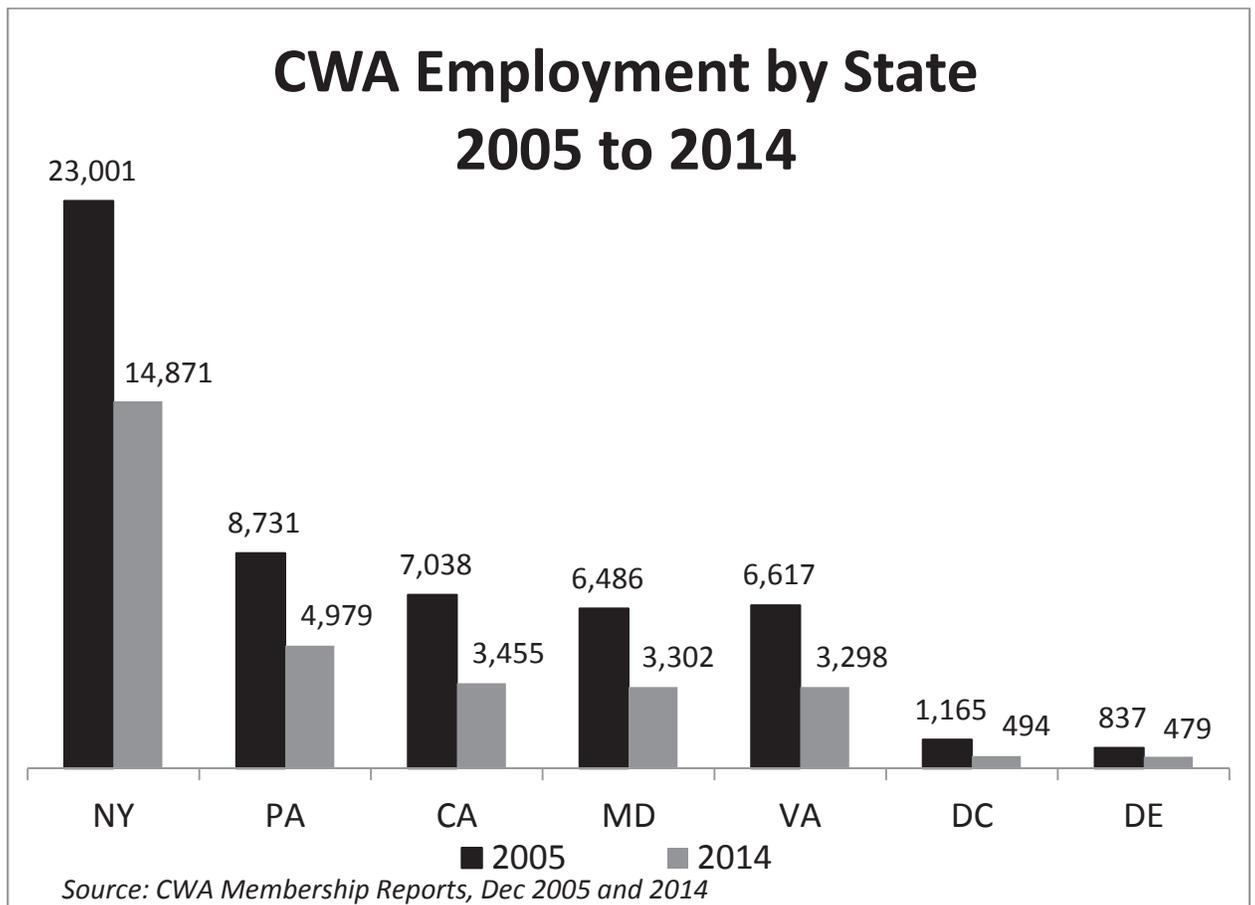
⁴³ New York Department of Information Technology and Telecommunications, Verizon FiOS Implementation: Final Audit Report, June 18, 2015 (available at <http://www.nyc.gov/html/doitt/downloads/pdf/verizon-audit.pdf>).

maintenance policies on the copper network on the jobs of CWA members, in August 2015 CWA surveyed members who work as Outside Plant Technicians in these six states in Verizon's landline footprint. More than 800 union members who work as Outside Plant Technicians returned the survey. All responses are based on union members' observations about hours and other working conditions. Below we summarize survey results (See Attachment 3 for a more detailed report on the survey results.)

1. Three-quarters of technicians reported that "most of the jobs" associated with proactive maintenance have been eliminated.
2. Two-thirds of technicians reported that "most of the jobs" associated with cable maintenance, copper installation and repair, construction, and line work have been eliminated.
3. Three-quarters of technicians report Verizon "rarely" assigns work hours to perform critical preventive maintenance functions on the copper network, including battery checks, air pressure testing, and reports predicting likely cable failure.
4. More than four out of every five technicians report that it is "very common" in the past year for Verizon to refuse to authorize repair or replacement of cable that the technician reports as defective. Verizon policies emphasize quick fixes rather than assign technicians the hours to repair faulty cable. Rather, Verizon instructs the technician to use service wire to bypass defective cable. Service wire is not grounded (offering no protection against lightning strikes) and deteriorates more quickly, resulting in repeat service outages, particularly in bad weather.
5. More than four out of every five technicians report that it is "very common" or "somewhat common" to offer the inferior fixed wireless Voice Link as an alternative to the assignment of more hours for a repair ticket or work order to fix the copper at a later date.
6. More than four out of every five technicians report that it is "very common" in the past year that Verizon fails to assign a technician to restore service within a 24-hour window.

Verizon has significantly reduced its technician workforce and there are not enough personnel to repair copper service, particularly when there is a major outage due to a storm or a major cable cut. CWA represents the Verizon non-management workforce of technicians,

customer service representatives, and repair bureau employees in New York, Pennsylvania, Delaware, Maryland, Virginia, Washington DC, Texas, and California. (The International Brotherhood of Electrical Workers, IBEW, represents Verizon non-management technicians in Massachusetts, Rhode Island, New Jersey, and Florida.) Over the past nine years, Verizon slashed its CWA-represented non-management workforce from 53,875 in 2005 to 30,878 in 2014, as shown in the following chart. This represents a reduction of 23,000 employees (43 percent) installing, repairing, maintaining, and serving customers.



As a result of these service problems, tens of thousands of consumers have lodged complaints with state regulatory bodies and on a Verizon peer-to-peer online forum. In response to Freedom of Information Act inquiries, CWA was provided with database summaries of consumer complaints to state regulatory agencies in a number of states in Verizon's traditional landline footprint.⁴⁴ In Pennsylvania, since 2012 more than 6,000 consumers lodged complaints about Verizon service outages, noise on the line, delays in installation and repair, and dangerous company facilities. In New York, more than 10,000 consumers lodged complaints about Verizon service issues; Verizon failed to meet the NY Public Service Commission benchmark for consumer complaints every single month between January 2012 and May 2015 (the most recent month for which CWA has data). In New Jersey, 1,600 consumers filed complaints with the state commission.

The online Verizon peer-to-peer forum contains further evidence of Verizon *de facto* retirement/discontinuance. There are three dominant themes in these complaints. (See Attachment 4.)⁴⁵

1. Every time it rains, the phone goes out of service. But when the customer reports the trouble, Verizon tests the line (after the weather has dried out), says the line is OK, and doesn't dispatch a technician. Next time it rains, the line goes out again.

Explanation: First, Verizon's automated systems "scrub" the trouble report, finding no trouble when the weather dries out. The automated system drops the trouble report from the system, so there is no dispatch. Second, Verizon doesn't replace the faulty cable, so next time it rains, there is another trouble on the line. Third, Verizon no longer does preventive maintenance to repair defective facilities before trouble on the line occurs.

⁴⁴ CWA continues to collect and tabulate this information. The large number of complaints is particularly noteworthy since consumers who call state commissions with complaints are initially transferred to Verizon. The state commission only records the complaint if the consumer calls back after the initial transfer.

⁴⁵ This document was previously filed in this proceeding. See Letter from Debbie Goldman, CWA Telecommunications Policy Director to Ms. Marlene H. Dortch, Secretary, FCC, *Technology Transitions et al*, GN Docket No. 13-5 et al, June 24, 2015 and Attachment "Public Complaints from Verizon's 'Home Phone (Landline or Digital Voice)' Forum, June 2015-2014.

2. The customer can't reach a live human being to report a trouble or no dial tone.

Explanation: Verizon encourages customers to report troubles using an online system. The system frequently doesn't work. The system drops customers' trouble reports. Due to insufficient staffing, the customers can't reach a live human being to report a trouble or find out when a dispatch will occur.

3. There are long delays in restoration of service.

Explanation: Verizon does not have enough frontline employees to provide prompt restoration of service. Verizon prioritizes service on its fiber/FiOS lines, and pushes back dispatch appointments for copper customers.

Finally, Verizon service quality data in New York state provides further evidence of Verizon *de facto* retirement/discontinuance. New York is one of the only states in the Verizon landline footprint that requires monthly reporting on service quality measures and makes this data available to the public.⁴⁶ Although New York has significantly scaled back its service quality reporting requirements, the data still present serious concerns.⁴⁷ Verizon missed the NY Public Service Commission benchmark for trouble reports in more than half (54 percent) of the reporting periods between Jan. 2012 and May 2015 (the most recent date for which we have data). Verizon is only required to report on service restoration intervals for about five percent of customers (what the PSC calls "core" customers – the elderly, disabled, and low-income). Even for this vulnerable group, Verizon missed the out-of-service restoration within 24 hours benchmark in 11 of 41 months in New York City alone. Verizon missed the benchmark for wholesale customers in 27 of 30 months, and for retail customers at least 252 times since 2012.⁴⁸

⁴⁶ The regulatory commission in Washington D.C., Delaware, Maryland, and New Jersey provided largely blacked out redacted responses to our Freedom of Information Act requests for service quality data, and Virginia no longer collects service quality data. This underscores the need for a comprehensive FCC service quality data collection program.

⁴⁷ See New York Public Service Commission, Case 10-C-0202, Verizon Service Quality Improvement Plan, Order Adopting Verizon New York Inc.'s Revised Service Quality Improvement Plan with Modifications, Dec. 17, 2010.

⁴⁸ CWA Calculations based on data provided by Verizon to the New York Public Service Commission and NY PSC Service Inquiry Reports.

In summary, the evidence is clear that Verizon has virtually abandoned proper repair and maintenance of its copper network serving upwards of eight million customers. The Commission has made clear that such *de facto* copper retirement and service discontinuance require advance notice according to its *Copper Retirement* rules and discontinuance application in accordance with Section 214 of the Communications Act.

V. Conclusion

Our nation is in the midst of a communications technology transition that will take place over a number of years. We are moving from circuit-switched wireline networks running on copper loops to all-Internet Protocol (IP) networks using copper, co-axial cable, fiber, and wireless infrastructure. The transition promises to bring many benefits to consumers as well as workers in the industry, but only if the Commission's stated enduring values of universal service, public safety, consumer protection, and competition continue to form the foundation of communications policy.

The Commission will facilitate an upgrading of our nation's communications networks, consistent with those values, by providing carriers and customers with clear, technology neutral criteria that it will use in the evaluation of a Section 214 service discontinuance application. CWA strongly supports the Commission's eight proposed criteria: 1) network capacity and reliability; 2) service quality; 3) device and service interoperability; 4) service for individuals with disabilities; 5) PSAP and 911 service; 6) cybersecurity; 7) service functionality; and 8) coverage.⁴⁹ In addition to these eight criteria, CWA urges the Commission to give particular weight to the issue of affordability in its evaluation of a Section 214 service discontinuance application. Consumers do not consider service alternatives that cost significantly more than

⁴⁹ *FNPRM*, ¶ 208, 216-233.

existing services delivered over legacy technologies as adequate substitutes. As part of its evaluation of service quality, the Commission should determine that the alternative technology or carrier(s) employ a skilled workforce and uphold the highest standards of labor rights. The Commission should make clear that a provider that has been found in violation of labor law will not be considered an adequate substitute. Finally, because good policy requires good data, the Commission should adopt an industry-wide service quality reporting program.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Debbie Goldman". The signature is written in black ink and is positioned above a solid horizontal line.

Debbie Goldman
Communications Workers of America

October 20, 2015