

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

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

**COMMENTS OF
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (Pa. PUC) files these Comments in accordance with the Public Notice (PN) in GN Docket No. 13-5 *et al.*, DA 15-1082 issued by the Federal Communications Commission (Commission) on September 25, 2015, soliciting comments regarding the *Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking* (“*Emerging Wireline Networks and Services FNPRM*” or “*FNPRM*”) issued on August 6, 2015.¹ The *FNPRM* set deadlines for filing comments and reply comments at 30 and 60 days after publication in the Federal Register. On September 25, 2015, a summary of the *FNPRM* was published in the Federal Register triggering the comment and reply comment deadlines.² Accordingly, Comments to the *FNPRM* are due October 26, 2015 and Replies will be due November 24, 2015.

¹*Technology Transitions et al.*, GN Docket No. 13-5 *et al.*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 15-97 (rel. Aug. 7, 2015) (*FNPRM*).

² See 80 Fed. Reg. 57768.

Introduction and Summary

The Commission had previously acknowledged that the nation's communications networks are in the midst of a technological transformation and rapidly transitioning from the historic provision of time-division multiplexed (TDM) services running on copper to new, all-Internet Protocol (IP) multimedia networks using copper, co-axial cable, wireless, and fiber as physical infrastructure.³ In the *Technology Transitions Order*, the Commission unanimously recognized that the success of these technology transitions depended upon the technologically-neutral preservation of principles embodied in the Communications Act of 1934, as amended, (Act), 47 U.S.C. §§151 *et. seq.*, such as competition, consumer protection, universal service, public safety and national security. These principles have long defined the relationship between those who build and operate networks and those who use them, and the Commission is determined to ensure that these fundamental values are not lost merely because technology changes.⁴

In November 2014, the Commission issued a Notice of Proposed Rulemaking and Declaratory Ruling⁵ (*Notice*) in which it sought to strengthen the public safety, pro-consumer and pro-competition policies and protections in a manner appropriate for the technology transitions that are underway and for the networks and services that emerge from those transitions. Therein, the Commission established rules promoting the transitions from more traditional networks based on TDM protocol circuit-switched voice services running on copper loops to all-Internet Protocol multimedia networks using a variety of physical infrastructure by protecting consumers and preserving competition.⁶

³See *Technology Transitions et al.*, GN Docket No. 13-5 et al., Order, Report and Order and Further Notice of Proposed, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, 29 FCC Rcd 1433, para. 1 (2014) (*Technology Transitions Order*).

⁴See *Technology Transitions Order*, 29 FCC Rcd at 1435-36, paras. 2-4.

⁵*Technology Transitions, et al.*, GN Docket No. 13-5, et al., Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968 (2014) (*Notice*).

⁶ *Technology Transitions, et al.*, GN Docket No. 13-5, et al., Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968-69, para. 1 (2014) (*Notice*).

Subsequently, the Commission issued this instant *Emerging Wireline Networks and Services FNPRM* to solicit comments regarding specific proposals for possible criteria against which to measure “what would constitute an adequate substitute for retail services that a carrier seeks to discontinue, reduce, or impair in connection with a technology transition (e.g., TDM to IP, wireline to wireless).”⁷ The Commission seeks to facilitate development of a sufficient record that will allow it to fully establish highly effective, clear, and technology-neutral criteria and rules that are carefully tailored to address the issues presented by the ongoing technology transitions process and to eliminate uncertainty that could potentially impede the industry from effectuating a rapid and prompt transition to IP and wireless technology.⁸ Specifically, the Commission seeks comments in order to codify clear criteria for evaluating the adequacy of replacement services that will provide transparency and certainty in an area that has been subject to case-by-case evaluation. Establishing formal rule-based guidance would assist in the preservation of pro-consumer and pro-competition policies and protections in a manner appropriate in the midst of the technology transition.

In this Comment to the instant *FNPRM*, the Pa. PUC asserts that IP-based and other new retail services must meet consumers’ and providers’ fundamental needs before the Commission allows a carrier to remove existing services from the marketplace. The Pa. PUC also asserts that the proposals of wireline incumbent local exchange carriers (ILECs) to migrate or transition to all-fiber networks and facilities can provide consumers with access to new advanced services as envisioned under state and federal law, while continuing to maintain universal and wholesale access services. The Pa. PUC strongly believes that technology transitions should not be used as an impediment to meaningful, vibrant competition or result in a limitation on competitive access to facilities and services.

⁷ *FNPRM* at para. 202.

⁸ *Id.*

Consequently, the Pa. PUC agrees with the Commission's tentative conclusion to adopt clear, technologically-neutral criteria that define what constitutes an adequate replacement for a discontinued retail service provided to end users or a wholesale access service by either the ILEC or competitive local exchange carriers (CLECs). However, any criteria the Commission establishes for this evaluation should not violate or obfuscate independent state law. The Pa. PUC asserts that concerns about ongoing technological changes, competitive access, and universal service should be addressed within the principle of cooperative federalism.

Lastly, the Pa. PUC agrees that the Commission should also evaluate the availability of alternative replacement services from sources other than the carrier seeking authority to discontinue an existing retail service under Section 214 of the Act. The evaluation of those alternative services should use the same criteria as those applied to any substitute or replacement service offered by the carrier that discontinues the existing service(s) at issue.

As an initial matter, these Comments should not be construed as binding on the Pa. PUC in any matter currently pending before the Pa. PUC. These Comments could change in response to later events, including *ex parte* filings or the review of other filed reply comments and legal or regulatory developments at the state or federal level.

A. The Commission Must Adopt Clear Criteria for Evaluating the Adequacy of Replacement Services in the Context of a Carrier Seeking Section 214 Relief to Discontinue an Existing Service.

The Commission is primarily focused on the technological revolution involving the transition from networks based on TDM circuit-switched voice services running on copper loops to all-IP multi-media networks using copper, co-axial cable, wireless, and fiber optic network facilities as physical infrastructure.⁹ Nevertheless, the Commission acknowledges that the advent of the technological transition, which fulfills the incentive to deploy advanced facilities and services, should also align with the goals of consumer protection, universal service and competition.¹⁰ Accordingly, the Commission seeks to adopt criteria that will eliminate any uncertainty as to what a carrier must fulfill in order to transition from an existing service to a newer service based on IP, wireless technology or a successor next-generation technology.

Concomitantly, Section 3011 of Pennsylvania law, 66 Pa. C.S. § 3011, declares that it is the public policy of Pennsylvania: (1) to strike a balance between *mandated* and *market-driven* deployment of broadband facilities and services; (2) to continue alternative regulation of local exchange telecommunications companies; (3) to ensure the efficient delivery of technological advances and new advanced services throughout the Commonwealth; and (4) to promote the delivery and provisions of competitive services without jeopardizing universal service. However, the Pa. PUC's primary concern with discontinuance of TDM-based service in the transition from TDM to IP-based services was that competitive LECs would lose the ability to access last-mile facilities, such as DS1 and DS3 special access lines that are necessary to serve their customers and that retail customers would not have access to a functional replacement service.¹¹

⁹ *Technology Transitions Order*, 29 FCC Rcd at 1433, 1435, para. 1.

¹⁰ *Id.*

¹¹ *See, e.g.*, Windstream April 28, 2014 *Ex Parte* Letter at 2-8. No discontinuance would affect an ILEC's obligations to provide unbundled access to loops under Section 51.319(a)(4) of the Commission's rules. 47 C.F.R. § 51.319(a)(4).

Accordingly, in prior filings, the Pa. PUC asserted that the Commission should require ILECs, which are seeking to discontinue, reduce, or impair a retail “legacy” service or a service used as a wholesale input by competitive providers, to provide a service with equivalent access on equivalent rates, terms, and conditions.

The Pa. PUC notes that the Commission is seeking to adopt rules that will resolve issues presented by the ongoing technology transitions process and that will stand the test of time. In the instant *FNPRM*, the Commission tentatively concluded that several of the criteria proposed by Public Knowledge are appropriate for determining whether to authorize carriers to discontinue a legacy retail service in favor of a retail service based on a newer technology.¹² The Commission stated that these proposed criteria aligned with its dual incentives of: (1) meeting the statutory obligations to protect consumers, competition, and the public safety; and (2) resolving discontinuance applications as briskly as possible.¹³

Specifically, the Commission proposed that a carrier seeking to discontinue an existing retail service in favor of a retail service based on a newer technology must demonstrate that any replacement or substitute service offered by the carrier or alternative services available from other competitive providers in the affected service area meets the following criteria in order for the Section 214 application to be eligible for an automatic grant pursuant to Section 63.71(d) of the Commission’s rules:¹⁴ (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) access to public safety answering points (PSAPs) and 9-1-1 service; (6) cybersecurity; (7) service functionality; and (8) coverage. The Pa. PUC is not opposed to

¹²*FNPRM* at para. 207, at 109.

¹³ *Id.*

¹⁴ 47 C.F.R. §63.71(d).

the Commission adopting these criteria to evaluate the adequacy of the replacement services in the context of the Section 214 discontinuance applications. The Pa. PUC states that the above criteria will provide carriers with the guidance and clarity they need to implement new technologies as quickly as possible. The FCC should avoid any result that obviates or supercedes independent state law on any process similar to Section 214.

Additionally, the Pa. PUC asserts that it is critically important that this criteria also apply to the replacement services offered to commercial stakeholders, including enterprise end users and wholesale competitive providers, so that technology transitions do no harm to the benefits of competitive access for retail customers or wholesale competitive providers.

Furthermore, the Pa. PUC agrees that in the midst of evaluating the adequacy of replacement services, the Commission should consider the availability of alternative services from sources other than the carrier seeking section 214 discontinuance authority. The Pa. PUC agrees that the Commission must evaluate the adequacy of those alternative services offered by competitive providers using the same criteria as those applied to any replacement service offered by the carrier discontinuing the services at issue.

As a preliminary matter, the Pa. PUC posits that the term “legacy service,” in reference to a technology transition, is too nebulous and vague of a term to use going forward, as the term ‘technology transition’ should always be relevant; thus, it is the more accurate to refer to a technology transition as a transition from an *existing* service to a replacement service using newer technology. Accordingly, the Pa. PUC advocates that the all of the proposed criteria should apply when an applicant seeks to discontinue an “existing” service in favor of a “service based on a newer technology” such as IP-based or wireless or any successor next-generation technology that arises in the near future. This is consistent with the Pa. PUC’s prior view that a change in the technology used to

provide a service is not tantamount to a change in the underlying legal regulatory structure or regulatory classification of the service.

1. Network Capacity and Reliability

The Pa. PUC agrees with the Commission's tentative conclusion that any adequate substitute test should evaluate whether the replacement or alternative service will (1) afford the same or greater capacity as the existing service and (2) afford the same reliability as the existing service even when large numbers of communications, including but not limited to calls or other end-user initiated uses, take place simultaneously, and/or when large numbers of connections are initiated in or terminated at a communications hub. This means that:

- Communications are routed to the correct location
- Connections are completed
- Connection quality and reliability do not deteriorate under stress (e.g., increased volumes of traffic)
- Connection setup does not exhibit noticeable latency.

The Pa. PUC states that network capacity, reliability and availability should be a part of the Commission's evaluation. To judge whether a substitute or alternative service offering meets its requirement that the service enables the use of real time applications, the Pa. PUC advocates adopting the same metric the Commission adopted in the Connect America Fund proceeding regarding the occurrence of "noticeable latency", -- at a 100 millisecond latency metric.¹⁵ The standards the FCC sets here should mirror those in the Connect America Fund proceeding generally for consistency and predictability.

Additionally, the Pa. PUC is not opposed to the Commission adopting metrics for jitter, packet loss, and through-put to provide a more complete and robust performance measurement of the substitute and alternative services being offered to evaluate successful routing, completion of connections, and quality deterioration. Furthermore,

¹⁵ See *Connect America Fund*, WC Docket No. 10-90, Order, 28 FCC Rcd 15060, 15064-70, paras. 19-36.

the Pa. PUC asserts that an availability measurable objective for the substitute or alternative service, especially voice communications, should not be less than any standard maintained by the states. Likewise, if the states have adopted a metric based upon “the same or substantially similar” criteria regarding the “availability” of non-dial tone services, Commission should not adopt a metric below the state-established metric regarding non-dial tone services. States should also be able as a matter of independent state law to establish criteria, when appropriate, that may be greater than those set by the FCC. This is consistent with regulatory federalism.

2. Service Quality

The Pa. PUC strongly agrees with the Commission’s acknowledgement that it is a reasonable expectation that consumers will continue to expect communications to be clear, understandable and free of distortion. These quality expectations should not fall by the wayside when a carrier transitions its facilities and services from the more traditional TDM-based network facilities to the use of different technologies and communication protocols. That is because, as noted earlier in this and other proceedings, the Pa. PUC does not believe that changes in the underlying technology to provide a service necessarily alters the regulatory structure or classification.

The Pa. PUC asserts that the Commission should acknowledge that it is not the only governmental entity with important responsibilities with respect to technology transitions. The states also serve a vital function in safeguarding the values of universal service, competition and consumer protection in the ongoing technology transitions. The Pa. PUC states that the Commission must recognize independent state law and should allow the state commissions to evaluate an ILEC's technological transition to ensure it complies with any applicable state requirements. Hence, the Pa. PUC agrees with the Commission’s tentative conclusion that one criterion in any adequate substitute test should be that the carrier demonstrates that any replacement or alternative service meets the minimum service quality standards set by the state commission responsible for the

relevant service area. This is necessary to ensure that a state's jurisdiction over critical services, inclusive of wholesale access services, or other service provided under state or federal law is not indirectly obviated by Commission action.

3. Third-party Devices and Service Interoperability

The Pa. PUC agrees with the Commission's tentative conclusion that one criterion in any adequate substitute test should be that the carrier demonstrates that its replacement service or the alternative services available from other providers in the relevant service area allow for as much or more interoperability as the service to be retired and discontinued. The Pa. PUC agrees with the Commission's assessment that it should take into consideration consumer trends in determining whether the replacement service directly impacts what consumers consider to be essential third-party devices, components or services. Thus, the Commission should consider not only the functionality related to voice calls (e.g., ability to use caller ID, access to 911/E911) but also non-call functions, third-party customer premises equipment (CPE), and/or services such as home alarms, fax machines and medical alert monitors.

As mentioned above, the Pa. PUC agrees that the Commission should take into consideration consumer trends in determining what has become an adequate substitute in the marketplace. The Pa. PUC states that this presumption can be rebutted where it could be shown that the discontinuance, reduction, or impairment of the retail or wholesale service would not: (1) discontinue, reduce, or impair service to a community or part of a community; or (2) impair the adequacy or quality of service provided to end users by either an ILEC or CLECs in the market. Accordingly, the Commission should also consider how the action to discontinue, reduce, or impair service impacts a community or part of a community such that approval is necessary pursuant to Section 214(a) and applicable state law where it may be necessary.

4. Service for Individuals with Disabilities, including Compatibility with Assistive Technologies

The Pa. PUC agrees with the Commission's tentative conclusion that one criterion in any adequate substitute test should be that the carrier demonstrates that its replacement service or the alternative services available from other providers allow at least the same accessibility, usability, and compatibility with assistive technologies used by consumers with disabilities as the service being discontinued. The Pa. PUC also asserts that an applicant seeking to discontinue support for analog services for consumers with disabilities should be required to ensure that the replacement service(s) is functionally equivalent *and* compatible with assistive technology devices used by people with disabilities on similar terms and conditions. In order to reduce the burden of obtaining new equipment because of the transition to a newer technology, the applicant also should provide notice to people with disabilities regarding the potential for disruption in service, such as TTY-based communications and information, and regarding the availability of IP-enabled assistive technologies and devices that can be distributed to selected and qualifying recipients under applicable state and federal programs. The input from people with disabilities should be a significant consideration in making a showing that there is any adequate substitute service available from the carrier or other carriers.

However, the Pa. PUC notes that this may appear to present a bit of a conundrum as other service providers may not be offering "comparable services" if the primary carrier stops offering its existing service due to the technological transition or if the substitute service is not compatible with certain existing assistive equipment. Nonetheless, the Pa. PUC suggests that the carrier should have to prove that such assistive technology offers are accessible to consumers with disabilities from a pricing, service, maintenance/repair, and use perspective, as well as, being likely to continue to offer the alternate accessible service before the Section 214 application is granted. But, again, input from persons with disabilities should be a considerable factor in addressing the comparability requirement for services to persons with disabilities.

The Pa. PUC is not opposed to the Commission's proposal to require providers of IP networks to include high definition voice (HDV) as a feature. As the Commission acknowledges in the *FNPRM*, the transition to IP networks may have a possible detrimental impact on people with disabilities. To address this issue, the FCC directs providers of IP networks to include HD voice service as a feature over their IP networks. The FCC states that HD voice may possibly reduce reliance on intermediary relay services, such as captioned telephone service (CTS) and IP captioned telephone service (IP CTS) in favor of mainstream forms of communication as HD voice may allow consumers with hearing impairment to be able to better understand conversations over the telephone and thereby improve accessibility of the network to such consumers.

However, the Pa. PUC cautions that the Commission should not prematurely force such an irrevocable change from a workable, albeit, imperfect system (CTS and IP CTS), especially since the new system (*e.g.*, HDV) has not been shown to demonstrably function in a significantly better and more reliable manner in regards to cost and accessibility than the existing intermediary relay service system. Rather, the Pa. PUC suggests that the Commission may want to establish a trial period where users can have both services/equipment available. The Pa. PUC asserts that parallel systems would let the early adopters work out any technical issues, a form of beta testing, in a marketplace before mandating an all-out migration to HDV. For those users who cannot accommodate the transition, they should be allowed to be grand-fathered with the legacy equipment and services in place.

5. PSAP and 9-1-1 Service

The Pa. PUC asserts that the ability of consumers to access 9-1-1 services and to reach the appropriate PSAP and for that PSAP to receive accurate location information for the caller is of the utmost importance. Thus, the Pa. PUC agrees with the Commission's tentative conclusion that one criterion in any adequate substitute test should be for the carrier to demonstrate that a substitute retail service available to its

customers complies with applicable state, Tribal, and federal regulations regarding the availability, reliability, and required functionality of 9-1-1 service. The Section 214 applicant should demonstrate that a substitute retail service will offer 911/E911 capabilities that comport with Commission rules and that the transition to such substitute retail service will not result in any reduction in 911/E911 capability relative to that offered by the discontinued service. Because of the specific importance of having reliable 911/E911 capability, the Pa. PUC asserts that the substitute or alternative services should provide as good – or better – 9-1-1 functionality as the existing service(s) being replaced.

Further, the transition to non-line powered residential phone service will mean that consumers need backup power to maintain their ability to reach 911. Thus, the Pa. PUC asserts that Section 214 applicants should demonstrate how they will disclose the options for consumer to purchase backup power to ensure that the technology transition permits them to maintain continuous communications during power outages, specifically, the ability to reach 911.¹⁶

6. Communications Security

The Pa. PUC agrees with the Commission’s tentative conclusion that one criterion in any adequate substitute test should be for the carrier to demonstrate that a substitute retail service available to customers offers comparably effective protection from network security risks. In the *Notice*, the Commission observed that IP technologies “can create the potential for network security risks through the exposure of network monitoring and control systems to end users” and sought comment “on whether the Commission should require demonstration, as part of the Section 214 discontinuance process, that any IP-

¹⁶ *In the Matter of Ensuring Continuity of 911 Communications*, PS Docket 14-174, Report and Order (rel. August 7, 2015).

supported networks or network components offer comparable communications security, integrity, and reliability.”¹⁷

The Pa. PUC states that the telecommunications networks are critical national infrastructure and taking steps to protect these networks from malicious attacks that could lead to loss of integrity, reliability and privacy is important. The dependence on telecommunications networks and the critical role that they play in the economic growth has led to government regulations in the telecommunications industry, which include requirements for ensuring the security of relevant equipment, networks, and services. The structure and functioning of circuit-switched PSTN networks, traditionally controlled by the telecommunications operators, ensured fewer possibilities for misuse of the network, as compared to a packet-switched network based on an open protocol like the IP. Packet-based switching technology used in Next Generation Networks is usually implemented through the use of the IP suite.

The PSTN networks are increasingly being operated by and are dependent on software and on parallel and interlaced control nodes, links and functionalities. As a result, users now have greater access to functions that were previously restricted to telecommunications employees. The wide range of end-user devices that can connect to the telecommunications networks has added to the complexity of the networks, thereby increasing the risks and vulnerabilities as well. This exposes the network to intruders and increases the potential for attacks caused by viruses, worms and other malicious software. Both the traditional circuit-switched networks and the packet-based next generation networks are exposed to different threats and attacks – both from external and internal sources – that target the various parts of the telecommunications network. However, the interconnection of the PSTN networks of fixed and mobile phone systems and the next generation network has increased the attack surface of the telecommunications networks.

¹⁷ Notice, 29 FCC Rcd at 15008, para. 99.

IP networks are based on open standards and present their own and ever evolving set of security challenges.

With this understanding, the Pa. PUC adopted regulations so as to ensure that our jurisdictional utilities, including telecommunications carriers, are effectively equipped and prepared to provide safe and reliable utility service when faced with security concerns and have the ability to detect, prevent, respond to and recover from abnormal operating conditions. The regulations establish an annual self-certification process for jurisdictional utilities to develop and maintain, *inter alia*, written physical security and cyber security plans.¹⁸ Hence, the Pa. PUC asserts that the Commission should adopt a similar criterion that ensures that substitute or alternative services adequately protect the interests of consumers from security threats and cyberspace attacks on the network, while preserving flexibility for providers to tailor security risk management practices to their unique needs and circumstances. The applicant must prove that the substitute service has adequate and competent security measures, based on globally accepted security standards and best practices, to ensure that the network is protected against malicious attacks, both external and internal, while also ensuring compliance to the local regulatory environment.

Finally, the Pa. PUC urges the Commission to rely on the previous and continuing work of its own Communications Security, Reliability and Interoperability Council (CSRIC) to address the questions and concerns articulated in the proposed rulemaking.

7. Service Functionality

The Pa. PUC does not oppose the Commission's tentative conclusion that one criterion in any adequate substitute test that should be that the carrier must demonstrate that any replacement offered by the requesting carrier or alternative service available from other providers permits similar service functionalities as the service for which the carrier seeks discontinuance authority. The Pa. PUC states that consumers have

¹⁸ 52 Pa. Code §§ 101.1 et seq.

increasingly become accustomed to certain services such as caller ID, transport of touch tones, and the ability to make calling card, dial-around, collect, or third-party number billed calls, as well as certain non-call functionalities of third-party CPE and services that communities expect and rely upon to support home or business security and fire alarm systems, elevator alarm systems, fax machines, medical alert monitors, broadband (*e.g.*, DSL, Ethernet over Copper), credit card processing, point of sale systems, and other functions currently supported by the PSTN. The Pa. PUC asserts that the functionality of the discontinued retail or wholesale service for both residential and business customers should be a primary factor considered in these cases and the replacement service's compatibility with these functionalities is the same or substantially similar in order to be a functional equivalent of the discontinued service.

8. Coverage

The Pa. PUC agrees with the Commission's tentative conclusion that one criterion in any adequate substitute test that should be that the carrier demonstrates that the substitute service will remain available in the affected service area to the persons to whom the discontinued service had been available. The Pa. PUC asserts if alternative services are simply not available to the affected customers this will have a detrimental impact on universal service and competition. The Pa. PUC states that the Commission should adopt a *de minimis* threshold based upon a percentage of the prior population or geographic area reached for which loss of coverage is tolerable.

B. The Pa. PUC Agrees with the Commission's Proposed Process to Review Section 214 Applications.

As mentioned above, the Pa. PUC advocates that the above proposed criteria should be adopted and become applicable when a carrier is transitioning customers from an existing service to a replacement service based on a newer technology or what the Commission refers to generally as a "technology transition". The Pa. PUC notes that the Commission reiterated that the availability of adequate replacement substitute services

(whether from the applicant itself or a competitive provider) is just one of five factors the Commission looks at in evaluating section 214 discontinuance applications under existing precedent. The adequacy of a replacement/substitute service(s) is to be balanced against the other factors in determining whether the public convenience and necessity will be adversely affected by discontinuance of the service at issue.¹⁹ Accordingly, the Pa. PUC asserts that all of the above criteria should be considered mandatory in order for an application to qualify for automatic granting under Section 214.

The Pa. PUC agrees with the Commission's proposed process for reviewing and evaluating a Section 214 discontinuance application. The Pa. PUC is not opposed to the Commission's tentative conclusion that, if a carrier certifies that it satisfies all of the criteria regarding the adequacy of replacement services, then the application will be eligible for automatic grant pursuant to Section 63.71(d) of the Commission's rules—as long as other already-adopted applicable requirements for automatic grant are satisfied following notice and input from the public.

The Pa. PUC asserts that in order for the Section 214 application to become eligible for automatic grant, the carrier's certification should consist of detailed statements as to the adequacy of the substitute service offer by it or alternative services offered by competitive third-party LECs. Again, the Pa. PUC asserts that it is incumbent that the applicant meets the criteria indicating that the replacement service is a functionally equivalent to the existing service that will be discontinued. Furthermore, where an ILEC continues to have carrier of last resort (COLR) obligations, an application to discontinue services and/or facilities may be subject to separate review under independent state law where such requirements may exist.

¹⁹In evaluating an application for discontinuance authority under section 214(a), the Commission considers five factors that are intended to balance the interests of the carrier seeking discontinuance authority and the affected user community: (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations. 47 U.S.C. § 214(a).

The Pa. PUC states that requiring this multi-factored showing from the carrier will promote innovation and competition. The Pa. PUC states that the Commission can either require that one replacement or alternative service satisfy every criterion it adopts in order to qualify for automatic grant, or it can determine that it is sufficient that multiple alternative services are available which collectively satisfy all of the adopted criteria. And, again, there should be a meaningful opportunity for notice and comment from the public, including the states.

The Pa. PUC agrees that, if, however, the carrier discontinuing a service during a technology transition is unable to file such a certification or if comments or objections call into question whether a substitute or alternative service satisfies all of the criteria the FCC adopts, then the Commission should not automatically grant the application. The Pa. PUC agrees that, in this instance, the carrier should be required to submit information demonstrating the degree to which it meets or does not meet each factor, and the Commission should weigh this information in its evaluation of whether a replacement service offered by the applicant or an alternative service offered by another provider in the relevant service area qualifies as an adequate substitute for the existing service for which the carrier seeks discontinuance authorization.

The Pa. PUC also agrees with the Commission's proposal to require that part of the evaluation of a Section 214 application to discontinue a "legacy" retail service should include whether the carrier has an adequate customer education and outreach plan. The Pa. PUC agrees that the discontinuance of an existing service on which customers presently rely creates an especially great need for customer education. Just recently, a certain PA ILEC began to transition one of its wireline centers from copper-based services to IP-based services within the Commonwealth and the Pa. PUC has had to deal with and address numerous consumer inquiries from customers residing in that particular wire center regarding the planned technology transition. Thus, the Pa. PUC appreciates

the Commission's statement that it remains concerned about the level of consumer education and outreach around technology transitions generally.

The Pa. PUC states that any proposal the Commission adopts should ensure that consumer education and outreach is a joint effort with the state commissions because consumers will undoubtedly submit inquiries and complaints directly to state commissions, as we are considered the "first line of defense" when dealing with utility matters. The Pa. PUC recommends that the Commission direct carriers to submit their technology transition consumer education materials to the relevant state commission for review prior to implementing the planned technology transition. This gives the state commission advance notice of the planned transition and allows the state commission to prepare for customer inquiries regarding the planned transition.

The Pa. PUC appreciates the opportunity provided by the Commission for the submission of these Comments.

Respectfully Submitted On Behalf Of
The Pennsylvania Public Utility Commission

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