

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

In the Matter of	)	
	)	
Technology Transitions Policy Task Force	)	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 VERIZON**

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Consumers have driven the country's ongoing technology transitions, dropping conventional landlines and legacy voice services and demanding upgraded facilities to their homes that can carry ever more sophisticated services. Today, many customers routinely obtain all of their landline communications services from now ubiquitous cable providers. Other customers pick and choose, receiving internet access or video from cable or but keeping their voice service from a traditional telephone company (often over fiber). And still others have cut the cord completely and use only wireless services, particularly for voice. In short, customers have been well-served, rather than harmed, by the progress so far in updating the technology that carries the nation's telecommunications services.

In this dynamic environment, legacy providers need to be able to roll out new competitive services and remove outdated ones quickly to compete effectively. The Commission needs to be careful not to create roadblocks that would slow just one set of competitors' modernization efforts.

The Commission here seeks to use Section 214 as a hook into the technology transition by creating a new set of criteria that it suggests carriers should meet in determining whether there is an "adequate substitute service" for a service that a carrier is discontinuing "in favor of a retail service based on a newer technology."<sup>1</sup> But the Commission's proposed criteria focus almost entirely on the facilities and networks that carry the "services" that would be discontinued or introduced, instead of on the services that are the subject of the Section 214 discontinuance requirements.

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<sup>1</sup> *Technology Transitions, et al.*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372, at Appendix B (2015) ("*Further Notice*").

Congress intended Section 214 to ensure that communities were not completely cut off from communication services.<sup>2</sup> As is clear on its face, the Section was not meant as a means for the Commission to regulate technology and facilities deployment and upgrades. The Commission recently recognized this distinction when it modified its copper retirement and battery back-up rules to address issues related to next-generation facilities under other provisions of the Act. It should not now use Section 214 to take another run at these same considerations. Similarly, the Commission should reject the urging of those, like CWA, who seek to use this proceeding as an avenue to encourage regulatory micromanagement by the Commission of everything from network deployment to service quality to repair.<sup>3</sup>

Instead, the Commission should build on the success of the consumer-driven technology transition to streamline the process for discontinuance filings, particularly for outdated services, services for which there are no or very few customers, or services with ample substitutes available. Providers should have access to a safe harbor for discontinuing these types of services, in which filings will be automatically granted after a notice period. For those discontinuances that do not fall within this safe harbor but are necessary because of a transition from TDM to IP or from wireline to wireless, the Commission should simplify its proposed criteria to focus on services, not on facilities. Section 214 filings that meet these criteria should also be granted automatically after a notice period. For those 214 filings that are neither within the safe harbor nor subject to the new criteria, the Commission should maintain the existing rules but set a timeline for its review so that providers can plan efficiently.

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<sup>2</sup> See Comments of Verizon, at 22-23 (Feb. 5, 2015) (explaining Congressional history behind the adoption of Section 214 and noting that Congress' particular worry was that merging telegraph companies might disrupt communications service to critical military and industrial facilities in wartime).

<sup>3</sup> See, e.g., Comments of Communications Workers of America (CWA) (Oct. 20, 2015) ("CWA Comments").

## **I. The Commission Should Adopt a Safe Harbor for Discontinuances to Give Providers Certainty and the Ability to Plan**

As discussed below, the Commission should modify several of its proposed new “criteria” to assess whether a replacement service is a reasonable substitute for a legacy service that a carrier seeks to discontinue. But regardless of what the Commission decides to do with those criteria, the Commission should adopt a safe harbor approach outside of those criteria for discontinuances of outdated or largely unused services or for services for which there is no means to continue them, when discontinuing those services will not affect the ability to call 9-1-1. For services that fall within this safe harbor, providers’ applications should be granted automatically, following appropriate notice. This safe harbor should apply to all Section 214 discontinuances, regardless of whether they are in the context of a technology transition.

As the Commission has noted, the crux of its concern over providers’ applications for discontinuances is to ensure that customers can make and receive voice calls to whom and when they want, including particularly calls to 9-1-1.<sup>4</sup> Many services that providers seek to discontinue do not affect this priority, because they do not involve voice or because customers themselves have already abandoned them in favor of other services. Also, sometimes a provider may have no control over the decision to discontinue. When a service relies on the use of a particular piece of equipment or an input that a vendor is discontinuing, for example, the provider often cannot continue providing that service and must discontinue it even if there are customers still using it.

The Commission should thus overlay any adoption of its proposed “criteria” with a safe harbor test: providing a bright line that providers can take advantage of when a proposed

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<sup>4</sup> See, e.g., *Further Notice*, ¶ 218; see also *IP-Enabled Services*, Report and Order, 24 FCC Rcd 6039, ¶¶ 8, 11 (2009). As noted below, the Commission does not have jurisdiction over local voice service.

discontinuance does not involve the transitions or related issues that the Commission has flagged. The Commission should grant automatic discontinuances that fall within this category, following appropriate notice to customers and a notification period.

Under the proposed appropriate “safe harbor” test, the Commission should automatically grant a 214 discontinuance if both:

- (1) Discontinuing the service will not terminate the end user’s ability to call 9-1-1; and
- (2) One or more of the following conditions are met:
  - Fewer than 5% of customers in the affected geographic area subscribe to the service;
  - The service is not used as a wholesale input by other providers;
  - There is another provider that offers substantially the same service in the same area;
  - There has been no new orders for the service during the past 6 months;
  - The service relies on vendor equipment or inputs that have been discontinued; or
  - The service is at or below 64 Kbps or functions in the analog bandwidth at or below 20000hz.<sup>5</sup>

Providers filing under this “safe harbor” must certify their discontinuance meets this test and customer notification requirements, but would be exempt from the detailed criteria and certification contemplated in the *Further Notice*. Discontinuances meeting this safe harbor test would be automatically granted following the notice period, rather than subject to being taken off of the automatic grant track.

This approach balances concerns about discontinuance of services with the understanding that there are many services that are no longer relevant or necessary in today’s communications

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<sup>5</sup> As the Commission has noted, “there is no evidence of significant demand for stand-alone DS0 service.” *Further Notice* ¶ 146. The Commission has also recognized that in many instances DS0 level services “have been supplanted by more recent technology. These outdated services often rely on equipment that manufacturers no longer build or support.” *Id.* at n.501 (quoting Letter from M. McCready to Marlene H. Dortch, GN Docket No. 13-5, at 1 (filed June 12, 2015)).

environment. Permitting providers a fast track to discontinue these unnecessary and unneeded services would create a better environment for continued upgrades of facilities and networks.

## **II. The Commission’s Proposed New Criteria, if Accepted, Should Be Revised to Conform to the Proper Scope of the Discontinuance Process**

Section 214 was written to ensure that that customers and communities are not completely cut off from communication;<sup>6</sup> the statute was never intended to be used to assess an overall transition in network facilities (indeed, many of the kinds of questions that would be reviewed in such an assessment are purely intrastate and beyond the scope of the Commission’s jurisdiction). Thus, the right questions here should focus on whether customers will be able to continue to communicate following a discontinuance associated with network transformation, not on detailed parameters concerning “jitter” or metrics such as “User Datagram Protocol”<sup>7</sup> in networks that have already been widely deployed and adopted by millions of customers.

In its *Further Notice*, the Commission suggests new criteria that providers would be required to certify they are in compliance with to remain eligible for automatic grant of a discontinuance of an existing retail service “in favor of a retail service based on a newer technology.” But these proposed new tests substantially increase the burden on and uncertainty of providers seeking to upgrade their service offerings without offering a corresponding benefit to customers. Most of the proposed criteria do not relate to “services” at all – the point of Section 214’s discontinuance requirements – but to the facilities on which those services are provided. The criteria seek not to evaluate services, but to delve deeply – and inappropriately – into providers’ networks and in some cases into local issues.

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<sup>6</sup> See n.2, *infra*, and citations therein.

<sup>7</sup> See, e.g., *Further Notice* ¶ 217.

The Commission should revise the proposed criteria to focus on the key issue for customers: whether they can communicate with whom and when they want as technology evolves, recognizing that customers have already chosen to do so using platforms and services other than legacy TDM voice. The Commission should not use service discontinuances as an invitation to revisit already well-established network deployments or to require minute descriptions of network performance when those facilities are already widely deployed and the services they provide have been widely embraced by consumers who have choices.

In addition, the Commission should modify its rules to include a firm timeline for its own issuance of public notices for a discontinuance after filing and for resolving matters which it has taken off the automatic grant track.

**A. Any Revised Discontinuance Process Should Offer Providers Greater Certainty and Predictability and Facilitate Technology Transitions**

**1. The Commission's Proposed New Criteria Should Apply Only to Interstate Telecommunications Services Discontinued In the Context of a Technology Transition, and Not to Every Discontinuance**

As the Commission is aware, transitioning networks to next generation facilities does not necessarily trigger a service discontinuance. In many cases, customers continue to receive the same services – such as POTS – they have always received, but over updated fiber facilities. Only a limited set of circumstances, such as interstate voice services discontinued expressly in connection with a transition from TDM to IP or from wireline to wireless, will trigger the Commission's new discontinuance process.<sup>8</sup> Thus, the Commission's new criteria, if adopted, should be limited to those discontinuances of interstate telecommunications services made in

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<sup>8</sup> The new rules should, of course, apply to all providers of voice services equally. The Commission has already held that Section 214 discontinuance rules should apply to VoIP, and providers other than traditional legacy carriers have filed 214 applications in the past to discontinue VoIP products.

connection with a technology transition, and they should not apply to discontinuances of services in the ordinary course.

The Commission thus should revise its suggested new rule in §63.602 to remove opportunities for confusion. The Commission suggests that the new criteria should apply when any “*domestic carrier ... seeks to discontinue, reduce, or impair an existing retail service in favor of a retail service based on a newer technology... .*”<sup>9</sup> First, the proposed language including discontinuances made “in favor of a retail service based on a newer technology” is impermissibly vague. Given the speed at which technologies evolve, this language also is overly broad: for example, it could be interpreted to include any update in technology, such as a provider’s use of a new internal system to provide voice mail services. Since the Commission intends new Section 63.602 to address technology transitions where large sections of a community are transitioned from TDM to IP or from wireline to wireless, it should revise the proposed language to include discontinuances that are necessary to such a transition and to make clear that other discontinuances, even if they might incorporate newer technology, remain subject to the existing rules. Second, the Commission should revise “domestic carrier” to be “domestic provider” to underscore that all providers of voice services are treated equally.<sup>10</sup>

**2. Discontinuances That Do Not Trigger the New Criteria Should Continue to be Evaluated Under the Existing Rules But With a New Timeline for Review**

In the last two years, there were almost one hundred 214 applications filed, the overwhelming majority for services and changes which have nothing to do with technology

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<sup>9</sup> *Further Notice* at Appendix B.

<sup>10</sup> The Commission rightly forbore from applying 214 discontinuance obligations to broadband. There is no basis in the record to support changing that determination.

transitions.<sup>11</sup> While many were automatically granted, there have been times when the Commission delayed timely issuance of a public notice on a filed application or pulled an application from the automatic grant track and did not resolve it for months.<sup>12</sup>

Given these facts, the Commission should continue to streamline the existing rules under Section 63.71 for discontinuances that are not necessary to a technology transition.<sup>13</sup> As described above, the Commission should create a “safe harbor” and automatically grant discontinuances that fall within those pre-determined categories. Further, as Verizon noted in its initial comments in this proceeding, there needs to be a pre-determined timeline both for when Public Notice is issued and for what happens when a filing is taken off of the automatic grant track. Providers need certainty when they file an application that the Commission will take

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<sup>11</sup> See, e.g., *Comments Invited On Application of TV Cable of Winamac, Inc. To Discontinue Interconnected VoIP Services*, Public Notice, 29 FCC Rcd 6100 (2014) (interconnected VoIP); *Comments Invited On Application Of Broadview Networks, Inc. To Discontinue Interconnected VOIP Services*, Public Notice, 30 FCC Rcd 4864 (2015) (HPBX service); *Comments Invited On Application Of AT&T Corp. To Discontinue Domestic Telecommunications Services*, Public Notice, 30 FCC Rcd 4760 (2015) (corporate calling card services); *Comments Invited on Application of tw telecom Holdings, LLC on Behalf of Certain of Its Licensed Operating Subsidiaries to Discontinue Domestic Telecommunications Services*, Public Notice, 30 FCC Rcd 2218 (2015) (calling card services); *Comments Invited On Application Of Global Crossing Telecommunications, Inc. To Discontinue Domestic Telecommunications Services*, Public Notice, 30 FCC Rcd 2794 (2015) (toll-free PIN and 700 number PIC verification services); *Comments Invited On Application Of XO Communications, LLC To Discontinue Domestic Telecommunications Services*, Public Notice, 29 FCC Rcd 13941 (2014) (Basic Business Line and Business Line Services); *Comments Invited On Application Of MCI Communications Services, Inc. To Discontinue Domestic Telecommunications Services*, Public Notice, 29 FCC Rcd 10417 (2014) (postpaid Calling Card).

<sup>12</sup> For example, Sprint’s application to discontinue certain long-distance services and associated features was not automatically granted, and was resolved by bureau order after what would have been the effective date. See *Section 63.71 Application of Sprint Communications Co.*, Order, WC Docket No. 15-186, DA 15-1098 (Sept. 29, 2015). See also *Section 63.71 Application of Puerto Rico Telephone Co., Inc. d/b/a Claro*, Order, 30 FCC Rcd 188 (2015) (Application filed Nov. 7, 2013; removed from automatic grant Jan. 30, 2014; Order granting application issued Jan. 15, 2015); *Section 63.71 Application of MCI Communications Inc. d/b/a Verizon Business Services*, Order, 29 FCC Rcd 9670 (2014) (Application filed Sept. 3, 2013; removed from automatic grant Dec. 13, 2013; Order granting application issued Aug. 12, 2014).

<sup>13</sup> Of course, discontinuances of local or intrastate services are not subject to FCC review.

action on it to put it out for public notice at a predictable time period. The Commission should require all discontinuance applications to be put out for public notice within thirty days of filing.

Second, providers need to know when an application is removed from the automatic grant, there will be some timeline for its eventual review and resolution. Consistent with its copper retirement timeline, going forward the Commission should apply an outside limit of six months from the date an application is filed with the Commission for the Commission to either grant or deny the discontinuance. Applications would be deemed granted if the Commission failed to act within that time period. This timeline would give the Commission additional time to review applications it pulls off of the automatic grant track but would also give providers more certainty for planning purposes.

**B. Specific Improvements to the Suggested Criteria**

**1. The Commission Should Modify Its Proposed Rules Regarding How Providers Apply the Proposed Criteria and Certify to Their Compliance**

For service discontinuances that do not fall within the safe harbor described above and concern discontinuances in the context of a technology transition from TDM to IP or from wireline to wireless, the Commission should reconsider some of the proposed criteria suggested here to focus on the services at issue and the realities of the current communications landscape, and not the underlying facilities. As proposed, the suggested criteria have four main flaws.

First, they presuppose in all cases there must be a direct substitute for a service discontinued in the course of a technology transition. This ignores instances where a service is simply outdated or unnecessary or where demand has fallen to near zero and no replacement is necessary. As discussed above, in these circumstances a provider should be able to use the suggested “safe harbor” and not be required to certify to the criteria.

Second, the criteria improperly focus on regulating facilities, rather than considering the propriety of discontinuing services. But in most cases, providers who discontinue services in connection with a technology transition are upgrading the underlying facilities to those already widely in use today. The market has already determined that these facilities and the services that are provisioned over them are widely acceptable. The Commission should not use Section 214 to revisit that assessment or frustrate technological progress.

Third, most of the criteria proposed go to details that providers would be unable to certify to as a practical matter or that are not relevant to many of the services that providers may wish to discontinue. For example, some of the criteria appear to request information that is not obtainable if another provider offers a replacement service. A provider should not have to certify to all of the criteria in those instances, since a provider may not be able to certify to another provider's capacity, reliability, service quality, interoperability, or coverage. Similarly, some of the criteria may not apply to certain discontinuances: for example, requirements related to the ability to reach 9-1-1 and public safety – important for all voice communication services – are not relevant to the discontinuance of certain low-speed data services. Because of this, criteria should be viewed as guidelines, rather than bright-line tests that must be met in all circumstances to remain on the automatic grant track.

And fourth, many of the criteria duplicate other procedures or processes already in place since much of the proposed criteria go not to “services” but to capabilities of the new technologies and networks that have already been reviewed and accepted by customers. The Commission has considered and encouraged the development of these facilities in prior orders or regulations, including its copper retirement and BBU orders, or in ongoing proceedings.

Similarly, some state regulation already addresses items like network capacity, reliability, and service quality, and there are existing processes in place addressing cybersecurity.

Regardless, should the Commission adopt criteria to help it assess the availability of reasonable substitutes in the course of transition-related discontinuances, it should do more than just permit a certified application to go on the “automatic grant track” and thus remain subject to removal and delay. The Commission should instead find that a certified application will be automatically granted.<sup>14</sup> Thus, in exchange for a provider putting forth the work to certify their application meets the criteria and assuming the attendant obligations of that certification, it would gain additional certainty that it would be able to withdraw a particular outdated service after an appropriate notice period.

## **2. Certain of the Proposed Criteria Should Be Modified**

If the Commission adopts these suggested criteria, in addition to the broader points above, it should consider the following specific issues and concerns.

### **a. Network Capacity and Reliability, Service Quality, and Coverage**

The Commission’s proposed criteria ask that providers certify that any adequate substitute afford the same or greater capacity and reliability as the existing service, even when used by large numbers of end users at the same time. The Commission also seeks to introduce requirements that an adequate substitute have a 100 millisecond latency metric, adopt metrics for jitter, packet loss, and through-put, identify repeat trouble rates and repair rates, and measure speed performance by either internal network management systems or external hardware approach.<sup>15</sup> But the proposed metrics for these three criteria relate to the facilities and networks

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<sup>14</sup> The Commission can address a certificate later found to be duplicitous through the Enforcement Bureau.

<sup>15</sup> *Further Notice* ¶ 217.

over which services travel, not the services themselves, and thus are inappropriate to a service discontinuance process. Many of these networks are already well established and the choice of millions of people.<sup>16</sup>

Some parties, such as CWA, continue to try to use this proceeding as a way to draw the Commission into micromanaging providers' networks and to try to gain advantage in CWA's ongoing labor negotiations. Verizon has spent \$50 billion on its wireline network between 2008 and 2014, including more than \$12 billion on maintenance and repair, restoral, and rehabilitation of copper throughout Verizon's wireline footprint.<sup>17</sup> Review of these broad network investments is not relevant to a specific targeted discontinuance application, and thus the Commission should not, as CWA urges,<sup>18</sup> require metrics on jitter, packet loss, latency, or collection of trouble and repair reports on individual service discontinuances. Further, the Commission should not adopt metrics such as the suggested 100 millisecond latency metric that relate to broadband applications, for which the Commission has rightly forbore from applying Section 214.<sup>19</sup>

Further, the proposed metrics in many instances are not obtainable for a limited geographic area: to the extent items like jitter or packet loss are identified, it is over a larger or different geographic region than might be contemplated in a specific discontinuance. And some of these metrics, such as the proposals relating to an upper limit over-subscription ratio or requiring dual-homing, are either inapplicable or impractical to a network with wireless components. Others, such as the proposed requirements of a three second dial-tone, rely on a customer's own equipment rather than the network's capability. Nor should the Commission

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<sup>16</sup> Moreover, a number of states already have network-related requirements for service quality and network performance and are monitoring accordingly.

<sup>17</sup> Letter from M. McCready to M. Dortch, GN Docket No. 13-5 (filed Oct. 23, 2015).

<sup>18</sup> CWA Comments at 8.

<sup>19</sup> *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, ¶¶ 509-10 (2015).

adopt CWA's suggestion that these criteria also assess a provider's overall workforce in the context of a discontinuance<sup>20</sup> – an issue that has nothing to do with service discontinuance standards, and everything to do with CWA's efforts to promote its own parochial interests.

As for the criteria relating to coverage, the Commission should be careful not to adopt any metrics or tests that would foreclose the use of wireless technologies as a substitute for wireline or vice versa, or require identical overlapping footprints for coverage to be acceptable.

**b. Device and service interoperability, including interoperability with vital third-party services and devices**

The Commission should be careful here not to require a provider to certify that its services are compatible with all possible third party services and devices prior to permitting a discontinuance to proceed. A provider cannot be expected to know the technical details of all of the potential third party devices that are in the market (or those which are no longer sold but which some consumers may still have in their homes). Nor should a provider have to ensure that new technology will work with all obsolete devices. The market for third party devices changes rapidly, as technology evolves and better solutions emerge. Requiring a provider to continue to prop up outdated devices would require diversion of resources that could otherwise be used to enhance and grow technology. Just as customers have become accustomed to and benefitted from technology upgrades in Internet technology, with applications and devices updating frequently as they are improved, similar benefits will accrue from providers' abilities to upgrade here. Further, the Commission should not adopt ADT's proposal to incorporate the Managed

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<sup>20</sup> CWA Comments at 8.

Facilities-Based Voice Network standards into its evaluation of service discontinuances; such network-standards have little relevance to the assessment of a specific service.<sup>21</sup>

**c. Service for individuals with disabilities, including compatibility with assistive technologies**

The Commission suggests that carriers must certify that any replacement or alternative service allow at least the same accessibility, usability, and compatibility with assistive technologies as the discontinued service. But the Commission already has in place a robust set of rules addressing service accessibility obligations under Section 255 and the Twenty-First Century Communications and Video Accessibility Act (CVAA).<sup>22</sup> These rules also require compatibility with existing peripherals and devices and prohibit installing network features or functions that inhibit accessibility. The Commission can and should rely on these existing rules to ensure the accessibility of telecommunications and Advanced Communications Services (ACS) services and equipment.

This proposed criterion also creates a new “comparative” factor. The rules implementing Section 255 and the CVAA determine accessibility based on the merits of the service/equipment, and do not explicitly provide for a comparative evaluation among services/equipment as to which is more readily accessible. The Commission’s proposal here to require evaluation on a comparative basis creates a new and unnecessary standard that does not reflect the balance Congress sought when it established the current broadly applicable accessibility standards. Moreover, evaluating the merits of new versus older services and equipment could ultimately

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<sup>21</sup> Comments of ADT (Feb. 5, 2015). Importantly, alarm companies have already incorporated wireless and fiber options into their technology. *See, e.g.*, Alarm.com Press Release, “Alarm.com and Verizon Launch Voice Over LTE for Enhanced Smart Home Security” (Oct. 20, 2015), <http://www.alarm.com/about/press/PressGeneric.aspx?cmid=241> (last visited Oct. 22, 2015).

<sup>22</sup> *See* 47 C.F.R. Pts. 6, 7, and 14.

adversely impact persons with disabilities by not enabling new technologies or by burdening them beyond what is “readily achievable.” And there would be no “comparison” at all if the service provider is proposing to discontinue a service no longer in use.

The Commission also raises questions relating to public programs that may provide equipment or funding for equipment. But service providers do not control the criteria used by the program to select participants or the area in which the program applicable. The Commission should not rely on such programs to determine whether service providers can offer and consumers can use new, updated services and equipment. Thus, the Commission should not tie the discontinuance process to the presence or absence of these public programs or their timeline.

Finally, the *Further Notice* raises questions relating to the adoption of real-time text (RTT). The Commission has already started evaluating the use of RTT as a successor to TTY in two specific ways that make it unnecessary to address in this context. First, the Commission initiated a proceeding and accepted comments on an AT&T petition for rulemaking to permit real-time text to serve as a successor to TTY under Commission rules and is likely to open a proceeding responding to AT&T's petition.<sup>23</sup> And second, the Commission also recently granted AT&T a temporary waiver of TTY rules pending its deployment of RTT and creating a path forward for other industry participants to deploy RTT in a timely manner.<sup>24</sup> While Verizon shares the Commission's interest in advancing the deployment of more capable technologies like

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<sup>23</sup> See Petition of AT&T Services, Inc. for Rulemaking, *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, et al.*, PS Docket Nos. 11-153 & 10-255; WC Docket No. 04-36; CG Docket Nos. 03-123 & 10-213 (filed June 12, 2015). See also Verizon Comments, GN Docket No. 15-178 (Aug. 24, 2015) (supporting AT&T's petition to clarify Commission rules to permit RTT to replace TTY).

<sup>24</sup> *Petition for Waiver of Rules Requiring Support of TTY Technology*, Order, GN Docket No. 15-178, DA 15-1141, ¶ 22 (Oct. 6, 2015). See also Verizon Petition for Waiver of Rules Requiring Support of TTY Technology, GN Docket No. 15-178 (Oct. 23, 2015) (seeking an identical waiver and committing to RTT deployment during the waiver period).

RTT, the Commission should address the specific issues involved in RTT (and any phase out of rules requiring provisioning of TTY on mobile networks) in that proceeding and should not include these issues as an add-on in the context of service discontinuances.

**d. PSAP and 9-1-1 issues**

The Commission recognizes the importance of customers' ability to call 9-1-1. We agree, as evidenced in our proposed safe harbor above, which includes a requirement that discontinuing the service does not affect the ability of the end user to call 9-1-1. The appropriate framework here, in the context of technology transitions, is ensuring that a replacement or alternative service provides the same capabilities or otherwise complies with applicable Commission rules. The Commission has already resolved questions about the use of battery back-up for VoIP services, and should not create separate rules or obligations in this context.<sup>25</sup> Additionally, the Commission rules already appropriately view the discontinuance or modification of 9-1-1 network services and components as matters to be worked out between and among carriers and their PSAP customers. The Part 12 rules already require a 9-1-1 service provider to certify to measures taken regarding circuit diversity, central office backup power and network monitoring in the 911 network.<sup>26</sup> Those obligations would remain if 9-1-1 trunks are migrated to next generation 9-1-1-capable gateways and transport methods. These issues are also currently being considered in the Commission's 9-1-1 governance proceeding and should not be revisited here.<sup>27</sup>

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<sup>25</sup> *Ensuring Continuity of 911 Communications*, Report and Order, 30 FCC Rcd 8677 (2015).

<sup>26</sup> 47 C.F.R. §§ 12.3-12.4.

<sup>27</sup> *See 911 Governance and Accountability; Improving 911 Reliability*, Policy Statement and Notice of Proposed Rulemaking, 29 FCC Rcd 14,208 (2014).

**e. Cybersecurity**

The Commission proposes that providers demonstrate an alternate service offers comparably effective protection from network security risks. But as with other recommended criteria, this recommendation deals primarily with the underlying facilities and networks rather than on particular services or discontinuances. These issues are already being reviewed in other proceedings and venues. For example, pursuant to Executive Order,<sup>28</sup> the Department of Homeland Security and the National Institute for Standards and Technology (NIST) are actively exploring cyber protection frameworks. The NIST cybersecurity framework referenced by the proposed criteria does not contain rules or standards; the agency has made clear cybersecurity issues should not be addressed by a one-size-fits-all approach. As the Chairman has noted, “Things change so fast in the cyber world that prescriptive regulations could never hope to keep pace.”<sup>29</sup> Additionally, industry initiatives, including the Comm-sector Coordinating Council, currently are identifying ways to improve cybersecurity.

Further, providers cannot opine on another provider’s security posture or procedures, and thus they could not certify as to those issues if relying on a third party’s replacement or alternative service.

**f. Service functionality**

The proposed criteria ask providers to certify that any replacement or alternative service permits similar service functionalities as the service the provider seeks to discontinue. But, an alternative service need not always provide identical functionalities to be an appropriate

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<sup>28</sup> *Executive Order 13636—Improving Critical Infrastructure Cybersecurity*, 78 Fed. Reg. 11739 (Feb. 19, 2013); *Presidential Policy Directive Critical Infrastructure Security and Resilience*, Presidential Policy Directive/PPD-21 (Feb. 12, 2013), <http://fas.org/irp/offdocs/ppd/ppd-21.pdf>.

<sup>29</sup> *Remarks of FCC Chairman Tom Wheeler, As Prepared for Delivery, RSA Conference* (Apr. 21, 2015), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-333127A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-333127A1.pdf).

replacement. Where a service is being discontinued because it has little or no demand, there is no reason to require a provider to identify a product that continues that service's functions. Such an obligation to forever support the buggy whip would force providers into maintaining outdated services in perpetuity. And as a provider cannot certify to how third parties use a particular service it offers, still less could it certify to how a third party use *another* provider's service.

Respectfully submitted,

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