

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	GN Docket No. 13-5
	)	
Technology Transitions	)	RM-11358
	)	
Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers	)	
	)	
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

**OPENING COMMENTS OF THE GREENLINING INSTITUTE  
ON REPORT AND ORDER, ORDER ON RECONSIDERATION,  
AND FURTHER NOTICE OF PROPOSED RULEMAKING**

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In accordance with the Commission’s August 7, 2015 Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking (“NPRM,”) The Greenlining Institute (“Greenlining”) files these Opening Comments. Greenlining generally supports the rules the Commission adopted in the Report and Order. Greenlining further agrees with the Commission that there should be clear criteria for considering whether a replacement service is an adequate replacement for a service that a provider seeks to retire pursuant to an application under section 214. The Commission should ensure that the “tech transition” does not simply replace the current network with technology that offers equivalent service; rather, the Commission should craft rules that ensure the tech transition fixes historical inequities in telecommunications access.

Greenlining generally supports the Commission’s framework as detailed in the FNPRM. However, in their proposed form, the Commission’s criteria for Section 214 review do not sufficiently protect communities of color. While communities of color have a slightly higher rate of “wireless-only” households than their white counterparts, a substantial number of people of color still depend on TDM-based services.<sup>1</sup> Greenlining feels that there is a substantial risk that under the proposed rules, carriers’ retirement of legacy services could result in small areas of the country—most likely home to low-income communities and communities of color—will lose access to affordable and reliable communications services. Additionally, in areas where there is still service, service quality could be substandard and more expensive. In order to ensure that communities of color are not disproportionately impacted by the tech transition, the Commission should ensure that replacement service offer affordable, ubiquitous and functionally equivalent

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<sup>1</sup> Division of Health Interview Statistics, National Center for Health Statistics, Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January–June 2014 5 (Dec. 2014), *available at* <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201412.pdf> (last accessed October 26, 2015).

service available on non-discriminatory basis to all consumers in the service area where the carrier seeks to discontinue service.

I. To Constitute an Adequate Substitute, a Replacement Technology must be Functionally Equivalent for Consumers.

Greenlining agrees with the FNPRM's conclusion that a carrier seeking approval of a section 214 application must show that any proposed replacement service be functionally equivalent to the discontinued service.<sup>2</sup> Greenlining cautions the Commission to, when performing this analysis, to focus not on whether the carrier seeking discontinuance feels that an alternative service is a replacement but rather whether **consumers** feel that the alternative service is an adequate replacement. Accordingly, to constitute an acceptable replacement service, an alternative service must provide the same functionality of the technology it is replacing. Additionally, the Commission's proposal to use state service quality guides to determine whether a replacement service is sufficient is, unfortunately, unworkable.

A. To Constitute an Acceptable Replacement Service, an Alternative Service Must Provide the Same Functionality as the Technology it is Replacing.

The FNPRM asks whether the applicability of the section 214 criteria should vary based on the nature of the available replacement technologies in the service area.<sup>3</sup> The Commission should not allow concerns about regulatory certainty or administrative efficiency to outweigh the public's need for affordable, ubiquitous, and reliable service. Greenlining feels that to constitute an acceptable substitute service, a replacement technology must meet the standards and functionality of the technology it is replacing. For example, if a carrier proposes mobile wireless

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<sup>2</sup> FNPRM at ¶ 229.

<sup>3</sup> FNPRM at ¶ 214.

as a substitute for traditional wireline service, that carrier must demonstrate that the mobile wireless service allows a customer to make a call from any room in that customer's residence.

B. The Commission's Should Not Use State Service Quality Requirements to Determine Whether a Replacement Service is Sufficient.

The FNPRM proposes that one factor in the adequate service test should be whether 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."<sup>4</sup> However, many state commissions are unwilling or unable to set minimum service quality standards, in large part because carriers promoting the dubious argument that states have no authority over what are clearly telecommunications services.<sup>5</sup> The Commission's adoption of a "state minimum service quality standards" rule could result in no requirements for substitute technologies at all. Accordingly, the Commission should not use state service quality requirements to determine whether a replacement service is sufficient.

II. To Constitute a Functionally Equivalent Service, a Replacement Technology Must be Affordable.

The FNPRM tentatively concludes that that the Commission should not address the issue of affordability of replacement services.<sup>6</sup> Greenlining strongly disagrees with this conclusion. To a consumer, affordability is a major factor in determining whether a replacement technology is an adequate substitute, because a consumer cannot replace one service with another service that the customer cannot afford. Additionally, the migration to a new technology may require a customer to pay for equipment, as well as installation or other non-recurring fees which further contributed to the expense of the service. Greenlining urges the Commission to include

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<sup>4</sup> FNPRM at ¶ 218.

<sup>5</sup> See Cal. Pub. Util. Code § 710.

<sup>6</sup> FNPRM at ¶ 234.

affordability in its analysis of whether a replacement technology constitutes an adequate substitute.

For these same reasons, Greenlining opposes the Commission's suggested policy of allowing a carrier seeking to discontinue service "be permitted to rely on one substitute service as to some factors and a different substitute service as to other factors."<sup>7</sup> Allowing carriers to obtain approval under section 214 by relying on multiple services could result in customers having to obtain a Frankenstein monster of multiple services. As a result, the need to pay for multiple services could be unaffordable to some customers, who would then be unable to acquire an adequate substitute for the retired service. Additionally, the separate services could have different terms or contract lengths, creating further customer confusion. [Conclusion here].

### III. To Constitute a Functionally Equivalent Service, a Replacement Technology Must be Universally Available.

The NPRM seeks input regarding whether a carrier must demonstrate that a "substitute service will remain available in the affected service area to the persons to whom the discontinued service had been available."<sup>8</sup> The Commission suggests adopting a *de minimis* percentage of prior population or geographic area for which a loss of coverage is "tolerable." Greenlining feels that the substitute service should serve all consumers in the service territory in which the carrier seeks to retire service. Additionally, Greenlining is concerned that a *de minimis* percentage could result in communities of color having disproportionately lower availability of the replacement service. Accordingly, the Commission should require carriers that seek to

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<sup>7</sup> NPRM at ¶ 213.

<sup>8</sup> FNPRM at ¶ 231.

discontinue service to demonstrate that the availability of any substitute service does not result in disparate impacts availability on consumers of color.

#### IV. To Constitute a Functionally Equivalent Service, a Replacement Technology Must be Non-Discriminatory.

As discussed above, the Commission should take steps to ensure that communities of color do not suffer disparate harm as a result of a carrier's retiring a service, and that any replacement service should be both available and affordable to communities of color. For example, the Commission proposes that as part of its section 214 review, the Commission will consider "whether the carrier has an adequate customer education and outreach plan."<sup>9</sup>

Greenlining supports this proposal, and feels that the Commission should also evaluate whether a carrier's customer education and outreach plan is provided in languages other than English. To many limited English proficiency customers, an English-only education and outreach plan is useless. Greenlining urges the Commission to require that any communications from a carrier regarding the discontinuance of a service or availability of a substitute service be available in languages other than English. At a minimum, the communications should be available to customers in any language that the customer's state publishes its voter guides.

#### V. Conclusion

Greenlining fully supports the promotion of new advanced communications services to every person in the United States. However, Greenlining remains concerned that without sufficient guidance from the Commission, communities of color will be left behind by the tech transition.<sup>10</sup> The Commission's rules should ensure that any substitute service be functionally

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<sup>9</sup> FNPRM at ¶ 234.

<sup>10</sup> See The Greenlining Institute, *Disconnected: What the Phone System's Digital Transition Will Mean for Consumers* (Dec. 2013), available at <http://greenlining.org/issues/telecommunications-technology/2013/disconnected-phone-systems-digital-transition-will-mean-consumers/> (last accessed Oct. 26, 2015).

equivalent to the discontinued service, affordable, and universally available on a non-discriminatory basis.

Respectfully submitted,

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