

**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 Alaska Communications Systems

Alaska Communications Systems (“ACS”)¹ hereby submits these comments in response to the Further Notice of Proposed Rulemaking (“Notice”)² issued by the Commission in the above-captioned proceedings. In the Notice, the Commission sought comment on a series of criteria it proposes to use under its newly-created “functional test” for evaluating the “existence, availability, and adequacy” of alternative services when considering telecommunications carriers’ applications to discontinue telecommunications services under Section 214(a) of the Communications Act of 1934, as amended (the “Communications Act”).³

In these comments, ACS urges the Commission to implement its new Section 214 service discontinuance test, by: (1) recognizing that sufficient universal service support is far more

¹ In these comments, “Alaska Communications Systems” the incumbent local exchange carrier (“ILEC”) subsidiaries of Alaska Communications Systems Group, Inc.: ACS of Alaska, LLC, ACS of Anchorage, LLC, ACS of Fairbanks, LLC, and ACS of the Northland, LLC.

² *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, 30 FCC Rcd. 9372 (2015).

³ Notice at ¶ 206; 47 U.S.C. § 214(a).

important to the delivery of reliable service in the Alaskan Bush⁴ than any specific collection of service discontinuance evaluation criteria; and (2) clarifying that already-proven intermodal substitutes will be viewed as sufficient to meet the Section 214 service discontinuance test.

Background

Section 214(a) of the Communications Act states that: “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.”⁵ The Commission uses five factors to balance the interests of a carrier seeking to discontinue a specific service against those of the user: (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.”⁶ With respect to domestic telecommunications services, the Commission’s rules provide a streamlined discontinuance process under which carrier applications are deemed granted on a streamlined

⁴ Conceptually, Alaska can be viewed as having three broad regions that each present different challenges to telecommunications service providers: the state’s three urban centers, Anchorage, Fairbanks and Juneau; rural areas connected to one or more of those population centers using the state’s road system; and “Bush” communities.

“Bush” communities are isolated geographically from infrastructure resources commonly available elsewhere in the state, and the nation as a whole. Most Bush communities cannot be accessed by road, and are not connected to the state’s power grid. To reach these communities, people, as well as goods and services, must arrive by plane, barge, snow machine, all-terrain vehicle, or other off-road transportation means. Communications services in these communities generally rely on satellite, or possibly microwave, transport links to population centers in Anchorage, Fairbanks, or Juneau.

⁵ 47 U.S.C. § 2134(a).

⁶ Notice at ¶ 206, n. 656.

basis, in most cases, either 31 or 60 days after the issuance of Public Notice thereof, absent contrary Commission action.⁷

In a November 2014 Declaratory Ruling, the Commission announced a new and highly subjective “functional test” under which it would evaluate one of the five existing factors – the “existence, availability, and adequacy of alternatives” – with respect to future carrier applications under Section 214(a) to discontinue telecommunications services.⁸ This Declaratory Ruling emerged from the Commission’s consideration of an application by Verizon New York and Verizon New Jersey to use fixed wireless “Voice Link” service as the best and fastest way to replace the destroyed facilities and resume service following the extraordinary October 2012 destruction of the telecommunications network serving portions of Fire Island, New York, and the New Jersey Barrier Islands by Hurricane Sandy.

To implement this “functional test,” the Notice proposes that carriers seeking streamlined treatment of Section 214(a) applications to “discontinue an existing retail service in favor of a retail service based on a newer technology” must meet an eight-factor test comparing the nature of the service a carrier proposes to discontinue against the available alternatives with respect to (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;

⁷ 47 C.F.R. § 63.71(d).

⁸ *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, et al.*, PS Docket No. 14-74, *et al.*, Notice of Proposed Rulemaking and Declaratory Ruling, FCC 14-185, 29 FCC Rcd. 14968 (2014) at ¶ 114 (“Declaratory Ruling”).

(5) PSAP and 9-1-1 service; (6) cybersecurity; (7) service functionality; and (8) coverage.⁹ The Commission seeks comment on the use of these criteria.

Discussion

A. The Commission Should Not Place Undue Emphasis on Preserving Legacy Network Implementation of Service Features

ACS believes that the Commission's "functional test" is fundamentally at odds with its broader effort to use every available tool to stimulate, accelerate, foster, and remove obstacles to the deployment of next-generation broadband services throughout the nation. When offered the choice, substantial numbers of customers opt for the advanced capabilities that broadband-enabled services offer. Equipment manufacturers likewise are keeping pace, modernizing their offerings in order to continue to meet their customer's needs as networks evolve.

The "functional test," focused as it is on maintaining not only the precise set of capabilities offered by legacy circuit-switched services used by "residential end users,"¹⁰ but also the methods (*e.g.*, specific CPE) by which legacy services deliver those capabilities, is unnecessarily complicated and backward-looking. Moreover, the "functional test" introduces several new and undefined concepts, requiring carriers to determine which retail services are based on "newer technology," and whether (and how) the test would apply when a carrier seeks simply to discontinue a service in favor of alternatives available from other providers, without specifically offering a replacement of its own.

Rather than explicating eight new discontinuance factors – raising the total from five to twelve separate requirements – the Commission should focus its efforts on creating a federal policy framework that encourages carriers and customers alike to make a smooth, organic, and

⁹ Notice at ¶ 208.

¹⁰ *Id.*

voluntary transition to next-generation services, rather than erecting new barriers to prolong the life of legacy services that few consumers truly prefer. Consumers have shown great willingness to embrace the service improvements that technology transitions permit, and the Commission has spent great effort reforming its universal service and other policies to accelerate those transitions through the deployment of broadband facilities and services.

Yet, even as new services deliver new and improved features and a better customer experience overall, they inevitably have capabilities and performance characteristics that differ in some ways from the services they supplant. The Commission would be better served by addressing any critical public interest or customer safety issues in a rulemaking context as they arise – as it did recently with the backup power issues, for example¹¹ – than by proceeding through piecemeal evaluation of individual carrier applications under Section 63.71. As written, the Commission’s new “functional test” risks hindering or delaying the achievement of the Commission’s broadband goals, as carriers discern how the Commission intends to apply its new test.

B. The Commission’s Proposed Factors Do Not Adequately Recognize the Economic Realities of Telecommunications Services in the Alaska Bush

The Commission’s proposed criteria for evaluating Section 214 applications to discontinue services appear to have been conceived with the competitive environment, cost profile, and network design of the Lower 48 states in mind. They do not reflect the realities of offering telecommunications services, particularly residential consumer services, in the Alaskan Bush. The public interest in modern, reliable telecommunications services in the Alaska Bush will be far better served through Commission policies that assure sufficient universal service support for investment in new middle mile and switching facilities, rather than new and ever

¹¹ *Ensuring Continuity of 911 Communications*, PS Docket No. 14-174, Report and Order, FCC 15-98 (rel. Aug. 7, 2015).

more elaborate sets of factors for evaluating service discontinuance applications. Without such support, discontinuance of service is ultimately inevitable.

ACS serves approximately 50 communities in the Alaskan Bush, a larger number than most Alaskan carriers. They range in size from fewer than 50 residents in the smallest, to about 800 in the largest. These Bush communities are located along the Aleutian Island chain, in difficult-to-reach areas of Alaska's rocky coast, among the coastal islands of Southeast Alaska, and in the state's largely unpopulated interior. They cannot be reached by road from the state's population centers of Anchorage, Fairbanks, and Juneau, and are not connected to the state's power grid. In order to provide telecommunications services in these communities, ACS depends on satellite, or in some cases microwave, interoffice transport facilities connected to its central offices in Anchorage.

It is cost prohibitive to provide service to these Bush communities without substantial assistance from federal and state high cost support. Since the 1996 enactment of federal law requiring that universal service support "should be explicit and sufficient," the Commission no longer can simply require carriers to subsidize service to such extremely high cost locations implicitly through above-cost rates charged to other customers elsewhere in their service areas.¹²

Further endangering service to extremely high cost locations, such as the Alaskan Bush, the Commission's Connect America Fund ("CAF") Phase II universal service reforms are systematically terminating high cost support for ILECs serving extremely high cost census blocks, as identified by the Commission's Connect America Cost Model ("CAM"). CAF Phase II uses a cost model to provide universal service support for broadband deployment in unserved census blocks where the cost of voice and broadband service, as modeled by the CAM, falls

¹² 47 U.S.C. § 254(e).

above a high cost support threshold established by the Bureau, but below an “extremely high cost” benchmark that marks the limit of the Commission’s high cost universal service budget resources. Currently, high cost support is terminating for census blocks that are above the “extremely high cost” benchmark, and that are served by price cap carriers that accept the statewide offers of CAF Phase II support. Recently, the Commission published a list of such census blocks where eligible telecommunications carriers (“ETCs”) retain federal service obligations, despite the potential lack of federal universal service for doing so.¹³ Regardless of how ACS’s statewide CAF Phase II commitment is defined, there are likely to be a large number of extremely high cost census blocks in Alaska where the availability, basis, and level of federal universal service funding remains uncertain, at best.

Even with universal service support for the annual costs of providing service in Bush locations, the viability of traditional wireline service is uncertain. ACS serves its Bush customers using an assortment of roughly 55 aging Nortel DMS-10 and Mitel switches, some of which date to the 1970s. Only six of these switches currently have SS7 links to Anchorage, and it would be cost-prohibitive to implement it for the others, primarily because of the lack of middle mile capacity and the high cost of the necessary bandwidth to do so.

As these aging facilities become increasingly un-repairable, it is a matter of time before traditional wireline voice service becomes unsustainable, irrespective of the wishes of carriers, the Commission, or customers.¹⁴ Investment in new facilities in the Bush without substantial

¹³ *Public Notice*, WC Docket Nos. 10-90, 14-192, 11-42 and 09-197, “Wireline Competition Bureau Releases List Of Census Blocks Where Price Cap Carriers Still Have Federal High-Cost Voice Obligations & Seeks To Refresh The Record On Pending Issues Regarding Eligible Telecommunications Carrier Designations And Obligations,” DA 15-851 (rel. July 23, 2015).

¹⁴ Genband, Inc., “Countdown to Shutdown: Ignoring the Aging Wireline Switching Infrastructure at Our Own Peril” (Dec. 6, 2012), at 1 (“Engineered for replacement prior to their

universal service support for the required infrastructure is economically infeasible. Owing to the small customer base in each village, ACS could not deploy even new voice facilities – let alone broadband – while keeping rates affordable, let alone reasonably comparable to those prevailing in Anchorage. The use of “soft switch” or other centrally-controlled switching options is impossible because the required middle mile bandwidth between these isolated locations and ACS’s facilities in Anchorage is either unavailable, or prohibitively expensive.

C. The Commission Should Confirm that Intermodal Substitutes that Have Gained General Acceptance in the Market Will Satisfy the Commission’s “Functional Test”

The Commission’s eight proposed criteria are intended to create a framework for determining whether other alternatives in the market should be considered substitutes for the service being discontinued. The proposed eight granular factors each identify a specific aspect of service that a subset of consumers may find relevant when evaluating whether to switch from their current service to a different service or technology.

In cases where the broader market has already confirmed that consumers consider a group of services to be substitutes for one another, the eight-factor analysis appears unnecessary. With respect to traditional wireline voice service (“POTS”), for example, “[r]ecent data indicate[] that 30 percent of all residential customers choose IP-based voice services from cable, fiber, and other providers as alternatives to legacy voice services. Moreover, 44 percent of

20-25 year end-of-design-life, most switches have passed that mark and are now operating on borrowed time. Because switches have performed in the past with reasonable regularity, operators can be easily lulled into believing that they will continue operating today exactly as they did yesterday. But just like relying on an aging football player to sustain the team, this past performance should not be an indicator of future reliability. Worse yet, the ‘countdown to shutdown’ is exacerbated by the attrition of skilled employees to operate the switches, vendors who are no longer able to support them, and a diminishing supply of spare parts.”), available at: http://www.genband.com/sites/default/files/resources/wp_countdown_to_shutdown_tdm_0131.pdf.

households were ‘wireless-only’ during January-June of 2014.”¹⁵ Thus, by the Commission’s own reckoning, some ¾ of consumers have already “voted with their feet” in favor of cable, VoIP, wireless, or other voice service alternatives. This substantial majority of customers have, in effect, already discontinued their legacy service in favor of market alternatives based on “newer technology.”

Therefore, the Commission should confirm that these services are all sufficiently similar in function to be adequate substitutes under the Commission’s proposed evaluation framework. Thus, a Section 214(a) service discontinuance application for POTS service should be afforded streamlined treatment if cable, wireless, or VoIP services will continue to be available in the market, even after the discontinuance of POTS.

The Commission’s concerns regarding the Voice Link service proposed by Verizon as a replacement for service in areas where its network was destroyed by Hurricane Sandy appear to have originated from its concern that, under Voice Link, some “fax machines, DVR services, credit card machines, some medical alert devices, and some (but not all) other monitoring systems like alarm systems” might not have continued to function as intended.¹⁶ But, the Commission cannot pursue its goal to accelerate the transition to IP-based networks and services while simultaneously ordering the carriers that are the engines of that change to use their scarce resources to preserve legacy services and facilities for a dwindling minority or users.

As the well-known aphorism says, “necessity is the mother of invention.” The Commission will best encourage the emergence of equipment and services that are interoperable with new network technologies by accelerating the deployment of new services that, by their

¹⁵ Notice at ¶ 9.

¹⁶ Declaratory Ruling at ¶ 116.

mere presence, will create a market for products that take advantage of their new capabilities. Heroic regulatory measures to prolong the life of the legacy copper network as an act of sheer regulatory will – and against the laws of economics – cannot succeed. When the Commission focuses on preserving the continued functionality of fax machines that require POTS, it is looking the wrong way. The Commission’s policies should look forward, to the deployment of new services that replace those capabilities in new and better ways – such as email, online fax send-and-receive services, or cloud-based storage and document collaboration – that relegate fax machines, finally, to their place in the Smithsonian.

Conclusion

For the foregoing reasons, ACS hereby urges the Commission to: (1) ensure its new “functional test” does not hinder the transition to broadband networks that has emerged as a top Commission policy goal; (2) recognize that sufficient universal service support is far more important to the delivery of reliable service in the Alaskan Bush than any specific collection of service discontinuance evaluation criteria; and (3) clarify that already-proven intermodal substitutes will be viewed as sufficient to meet the Section 214 service discontinuance test.

Respectfully submitted,



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