

**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

**REPLY COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

In the *Further Notice*, the Commission proposes eight criteria that would have to be met for a carrier to be eligible for an automatic grant of discontinuance authority under Section 214 of the Act and Section 63.71(d) of the Commission’s rules.¹ As explained in these reply comments, the National Cable & Telecommunications Association (NCTA) encourages the Commission to clarify that its proposal applies only to applications submitted by incumbent local exchange carriers (LECs) for authority to discontinue legacy services. Furthermore, even with respect to legacy services provided by incumbent LECs, the Commission should streamline the process by recognizing that consumers have embraced facilities-based alternatives such as Voice over Internet Protocol (VoIP) and mobile wireless service. In addition, to the extent the

¹ *Technology Transitions*, 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) at ¶ 208 (*Further Notice*).

Commission applies any criteria to an incumbent LEC's discontinuance application, the burden should be placed on the incumbent LEC to demonstrate that its replacement service meets those criteria, and not on providers that operate in competition with the incumbent LEC.

I. THE COMMISSION SHOULD PRESERVE THE EXISTING REGIME FOR DISCONTINUANCE APPLICATIONS BY COMPETITIVE PROVIDERS

Section 214(a) requires carriers to obtain prior approval from the Commission to “discontinue, reduce, or impair service to a community, or part of a community.”² The *Further Notice* solicits comment on what type of approval process should apply in cases where a carrier seeks to discontinue legacy voice and data services as part of the ongoing technology transitions taking place across the telecommunications industry.³ In particular, the Commission states that its “purpose is to adopt clear criteria that will eliminate uncertainty that could potentially impede the industry from actuating a rapid and prompt transition to IP and wireless technology.”⁴

With respect to services offered by competitive providers, the eight-factor test proposed in the *Further Notice* is at odds with the goal of establishing “clear criteria” that will facilitate “a rapid and prompt transition” to new technologies. The record contains no evidence of any problems or deficiencies with the Commission’s current regime for discontinuance applications submitted by competitive providers. In such situations, where companies have invested private capital to compete with the incumbent LEC, there is no need for the detailed showing proposed in the *Further Notice*. Accordingly, the Commission should make clear that any new test it adopts pursuant to Section 214 is applicable only to legacy services offered by incumbent LECs.

² 47 U.S.C. § 214(a).

³ *Further Notice* at ¶ 202.

⁴ *Id.* at ¶ 203.

II. IF THE COMMISSION ADOPTS ADDITIONAL DISCONTINUANCE CRITERIA FOR INCUMBENT LECs, COMPETITORS SHOULD NOT BEAR THE BURDEN OF DEMONSTRATING THAT THE INCUMBENT LEC SATISFIES THOSE CRITERIA

As applied to incumbent LECs, it is questionable that the Commission's proposed eight-part test is necessary. As an initial matter, where consumers in the relevant area have access to alternative services such as facilities-based VoIP or mobile wireless (as demonstrated by the Form 477 data that providers must submit to the Commission every six months), a multi-factor test for discontinuance authority does not appear to be necessary. Consumer behavior over the last decade has demonstrated that these services meet the needs of consumers and the Commission's discontinuance process should reflect that fact.

To the extent that the Commission retains a list of criteria that must be satisfied by an incumbent LEC seeking permission to discontinue a legacy service, it should streamline the list proposed in the *Further Notice* and make clear that the burden of satisfying these criteria falls solely on the incumbent LEC and not on competitive providers. NCTA generally agrees that many of the proposed factors are unnecessary and infeasible to measure in a meaningful and timely manner, particularly in areas where alternative services are available from competitors. As AT&T explains, "there is simply no reason for metrics relating to service quality, device and service interoperability, communications security, or service functionality."⁵ A detailed inquiry into those issues as part of the discontinuance process seems inappropriate in situations where the Commission has not previously adopted generally applicable standards governing the service to be discontinued or the replacement service.

Regardless of which factors the Commission chooses to eliminate or retain, it should make clear that the burden of satisfying those criteria falls solely on the incumbent LEC and not

⁵ AT&T Comments at 10; *see also* Verizon Comments at 11-18.

on competitive providers.⁶ The Commission is correct that the goal of the IP Transition is to bring improved services to American consumers. While a carrier should not be required to demonstrate that each and every feature of its legacy service is replicated in its replacement service, it should be able to demonstrate that the new service has advantages over the legacy service it is replacing. Incumbent LECs should bear the burden of making this showing and the Commission should reject any suggestion that the discontinuance process should trigger a lengthy and expensive data collection effort for other companies operating in the relevant geographic area.⁷

⁶ While NCTA favors significant streamlining of the discontinuance process, whatever criteria the Commission retains should be applicable to all incumbent LECs. To the extent the Commission concludes that particular criteria are necessary to protect incumbent LEC customers, there is no basis for exempting rural LECs as some parties have suggested.

⁷ *See, e.g.*, AARP Comments at 9 (“The Commission should require direct evidence from any third-party service provider regarding the functionality, coverage, reliability, and affordability of the services identified as potential replacements.”).

CONCLUSION

The Commission should clarify that the proposed discontinuance process applies only to legacy services offered by incumbent LECs and that it will retain the existing process for discontinuance of services by competitive providers. With respect to incumbent LECs, the Commission should streamline the process significantly, particularly in areas where alternative services are available from facilities-based competitors. To the extent the Commission retains a list of criteria it will consider as part of the discontinuance process for incumbent LECs, it should streamline that list and make clear that the burden of satisfying those criteria will fall solely on incumbent LECs and not on their competitors.

Respectfully submitted,

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