Before the
Federal Communications Commission
Washington, DC 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 PUBLIC KNOWLEDGE, ACCESS HUMBOLDT, APPALSHOP, THE BENTON FOUNDATION[1], THE BROADBAND ALLIANCE OF MENDOCINO COUNTY, CENTER FOR RURAL STRATEGIES, COMMON CAUSE, RURAL BROADBAND POLICY GROUP, INSTITUTE FOR LOCAL SELF-RELIANCE, NATIONAL CONSUMER LAW CENTER, ON BEHALF OF ITS LOW-INCOME CLIENTS, AND THE VIRGINIA RURAL HEALTH ASSOCIATION

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[1] The Benton Foundation is a nonprofit organization dedicated to promoting communication in the public interest. These comments reflect the institutional view of the Foundation and, unless obvious from the text, are not intended to reflect the views of individual Foundation officers, directors, or advisors.

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I. THE COMMISSION SHOULD REJECT ILECS' ATTEMPTS TO SHORT-CIRCUIT THE 214 REVIEW PROCESS

A. Section 214 Is An Affirmation Of Universal Service Priorities, Not A Backstop Against Total Disconnection.

The constrained view of section 214 put forth by Verizon and others—that it is designed to ensure "customers and communities are not *completely* cut off from communication"[2]—fundamentally misreads both the statute and the underlying policy goals embodied in the Communications Act at large (and section 214 specifically). The Communications Act established the FCC with the explicit goal of ensuring universal service for *all* Americans, not simply those who live in geographically convenient areas. It explicitly sets a goal

> to make available, so far as possible, **to all the people of the United States**, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of **promoting safety of life and property** through the use of wire and radio communications.[3]

Building upon that, 47 U.S.C. § 254 adds that

> Consumers in all regions of the Nation, **including low-income consumers and those in rural, insular, and high cost areas**, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, **that are reasonably comparable to those services provided in urban areas** and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.[4]

The FCC has repeatedly interpreted this provision as a mandate to ensure that service in rural and high-cost areas is continually improved, and not degraded or removed simply

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[2] Comments of Verizon, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (Oct. 26, 2015) at 5 (emphasis added).
[3] 47 USC § 151.
[4] 47 USC § 254(b)(3).

because of cost.[5] Congress specifically directed the FCC to ensure that such vulnerable communities receive the same quality of telecommunications service as residents of urban areas. This is a fundamental democratic principle underlying our telecommunications policy—one that the ILECs propose we leave behind as a historic relic.

Instead, Verizon's reading of 214(a) as a last-ditch backstop against total disconnection indicates that they are not interested in providing rural and high-cost customers more than the absolute bare bones of connectivity. To the extent that Verizon feels overburdened by this mandate, we advise it to take its protests to Congress, and not bootstrap its complaints onto a proceeding that focuses on the implementation of this section.

B. The Commission Should Replace Its Five-Factor Test In Cases of Rural and High-Cost Technology Transfer.

By AT&T's own admission, fewer than 14% of housing units in AT&T's ILEC footprint rely on legacy TDM service.[6] This number, however, fails to reflect that AT&T is a carrier of last resort for many of these customers. To imply that the mere (and, in areas affected by severe weather, largely hypothetical) ability of these individuals to reach emergency services is the only factor worth consideration is ridiculous. To do so discounts the proliferation of lifesaving uses, both individual and institutional, of the

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[5] *See, e.g.*, Petition of NTUA WIRELESS, LLC For Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934, As Amended, Universal Service Reform – Mobility Fund; WC Docket No. 09-197, WT Docket No. 10-208; *Order*, 28 FCC Rcd. 16407 (2013); *see also* High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers, RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment; WC Docket No. 05-337, CC Docket No. 96-45; *Order*, FCC08-122 (2008) (describing "the Act's universal service goal of improving the access to telecommunications services in rural, insular and high-cost areas"); *et al.*

[6] Comments of AT&T, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (Oct. 26, 2015) at 2.

legacy network that ILECs wish to discontinue simply because of its comparatively low subscription rate. Gas and electric utilities that service millions of people are among the "near-zero"[7] demand for legacy services.[8]

As time passes, the tech transition will progress farther into rural, high-cost, and low-income areas. The Commission is charged by statute with ensuring that these communities receive service comparable to that available in urban areas. However, the current system of five criteria, which weighs carriers' self-reported costs against service comparability, threatens to swallow this principle in these areas. The statutory mandate to ensure comparable service must take precedence over cost considerations. As such, we urge the Commission to revise its 214 checklist for petitions involving technology transfer by replacing the current five factor test with the eight factor test proposed in the FNPRM.

C. Verizon's "Safe Harbor" Proposal Is Ill-Considered And Should Be Rejected.

Verizon's suggested "safe harbor" criteria are impermissibly overbroad in light of the statutory mandates outlined above. Verizon seeks a provision under which it would not be held liable for discontinuing its less-popular legacy services, so long as its customers retained the theoretical ability to reach 911 through some alternative method.[9] Although they claim that discontinuing these "near zero" demand services carries only

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[7] Verizon Comments at 9.

[8] *See* Comments of Utilities Telecom Council, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (Oct. 26, 2015) at 3.

[9] Verizon Comments at 4 (suggesting an automatic discontinuance would be appropriate "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.").

negligible risk, the reality is that even low-subscription legacy services can (and do) include critical infrastructure and health services, such as public utilities and hospitals.[10] Subscription rates that appear small on paper may not accurately reflect the importance of these legacy services in protecting life and property.

The safe harbor proposal would also provide a road map for ILECs to evade the 214(a) process altogether. Their proposed criteria would include services which have received "no new orders" in the preceding 6 months[11]--a fundamentally meaningless metric, given that the carrier can easily navigate potential customers away from legacy services through advertising or point-of-sale representatives, even when those services would best serve those consumers' needs.[12]

D. Commercial Availability Does Not Indicate Per Se Substitutability.

Verizon conflates availability with substitutability when it claims that "[t]he market has already determined that these facilities and the services that are provisioned over them are widely acceptable."[13] The fact that a technology has found popularity among urban or suburban customers does not indicate that it serves as an adequate substitute for the unique needs of rural, low-income, or disabled individuals. The Commission cannot judge substitutability by permeation alone, despite the urgings of parties such as Verizon.

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[10] *See* Utilities Telecom Council Comments at 2-3; Comments of Edison Electric Institute, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (Oct. 26, 2015) at 2.
[11] Verizon Comments at 4.
[12] Although a total safe harbor provision would undermine the 214(a) process, we agree with Verizon's comments to the extent that they seek to preserve the status quo in cases where a technology transfer is not at issue. Because the concerns addressed by this proceeding have touched exclusively on the risks inherent in transitioning from legacy networks to newer technologies, we see little value in extending the new criteria to more routine requests that do not raise the same risks as those presented in the docket thus far. In these cases, applications should be streamlined and considered under the existing automatic grant track.
[13] Verizon Comments at 10.

When it comes to demand, the preservation of life and safety must take precedent over carriers' desires to maximize profit; "near zero" demand[14] is not "zero" risk.

Similarly, several commenters have discussed the viability of wireless as a potential substitute service. [15] AT&T incorrectly claims that "Public Knowledge has suggested that only a wireline service can be an adequate substitute for a legacy wireline service."[16] On the contrary, Public Knowledge fully supports the evaluation of wireless as a potential adequate replacement service under 214, so long as it is done in a technologically neutral manner, using the same criteria as those used to evaluate wireline services. However, the current state of wireless services indicates that this is, at best, a hypothetical future development; current CMRS services fall far short of the technical reliability needed to adequately replace TDM service. Existing CMRS services are currently unable to fulfill the standard of reliability and consistency required for a 214 discontinuance due to their wide variation in availability due to geographic and atmospheric factors. Contrary to ILECs' assertions, quality and reliability are not gestalt measurements; the purpose of 214 is to ensure that they exist at an individual level. The 214 process is designed to ensure that all Americans have a comparable connection to the phone network—not "Americans who don't live in a valley," or "Americans who don't live near an RF emitter," but *all* Americans. Until the technology exists to guarantee consistent quality on an individual subscriber level, then wireless offerings currently on the market are simply not comparable substitutes.

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[14] *Id.* at 9.
[15] Comments of Appalachian Regional Commission, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (Oct. 26, 2015) at 2; AT&T Comments at 10; Comments of Century Link, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (Oct. 26, 2015) at 31; Comments of National Rural Electric Cooperative Association, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (Oct. 26, 2015) at 6; Verizon Comments at 13.
[16] AT&T Comments at 11.

II. THE COMMISSION MUST MAINTAIN BROAD CONSUMER PROTECTIONS

A. Ensuring adequate notice to consumers will require community involvement and broad outreach.

Given the scale of the technology transition, any effective consumer education campaign will require coordination among multiple players. The Commission must reach out to a broad range of community organizations, including non-profits and state and local governments, in order to achieve broad dissemination of critical information.

Even with an outreach campaign, providers will still serve as the primary source of notice and information for consumers during the transition, and should be held to minimum standards. Adequate notice standards are especially important for the protection of vulnerable populations such as the elderly and disabled.[17] To the extent that the Commission seeks specific requirements for carriers' consumer awareness campaigns, it must, as an absolute minimum, require providers and their agents disseminate only accurate, actionable information and hold providers accountable for statements made to consumers by their employees and contractors. Public Knowledge also supports AARP's list of issues that should be included in any consumer outreach plan.[18]

To the extent that the Commission decides to mandate specific language standards for consumer notification, the FTC's standards for "clear and conspicuous" disclosures may provide useful guidance to ensure all notices provide consumers with the accurate

[17] Comments of AARP, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, at 26 (Oct. 26, 2015) ("AARP Comments"); Comments of Communications Workers of America, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, at 14 (Oct. 20, 2015) ("CWA Comments")

[18] AARP Comments at 25-27.

information they need in a format most useful to them.[19] Although these guidelines do not contain concrete standards, they do provide useful guidelines to evaluating the sufficiency of consumer notice.

B. Public Knowledge Supports AARP's Proposed Metrics for 214(a) Checklist Criteria.

In addressing service quality, AARP suggests the Commission consider a hybrid approach to measuring service quality that applies specific standards associated with service availability, packet loss, jitter, and delay, and also applies the Mean Opinion Score to ensure that the audio fidelity of calls is of high quality.[20] They also provide additional voice service parameters. By adopting these standards, the Commission will provide carriers with reasonable expectations as to the level of service quality they should provide. AARP has also proposed detailed standards and metrics for device and service interoperability, compatibility of assistive technology, communications security, and PSAP and 9-1-1 Service. Public Knowledge fully supports the metrics proposed in AARP's comments, which provide the Commission with detailed, thoughtful guidance on how to approach the criteria proposed in the FNPRM.[21]

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[19] The FTC evaluates the effectiveness of disclosures based on four factors: prominence (is it prominent enough for consumers to read easily?), presentation (is it worded in such a way that consumers can understand?), placement (where is the statement physically located on the document?), and proximity (is it close to relevant information or the claim it modifies?). For a more detailed discussion, see Lesley Fair, Full Disclosure, F.T.C. BUSINESS BLOG (Sep. 23, 2014), https://www.ftc.gov/news-events/blogs/business-blog/2014/09/full-disclosure.

[20] AARP Comments at 14.

[21] *Technology Transitions et al.*, GN Docket No. 13-5 et al., Report and Order, Order on Reconsideration, and Further Notice of Proposed, FCC 15-97 at ¶207 (Aug. 7, 2015) (hereinafter "FNPRM").

C. Affordability and Adequate Transmission Capability are Critical to Protecting Consumers During the Transition.

There is wide support in the record for the Commission to consider affordability when making an adequate substitute determination under section 214.[22] Commenters offer many compelling reasons why affordability is an important factor that the Commission should not ignore. Declining to consider the affordability of a proposed substitute service ignores the Commission's statutory mission to facilitate telecommunication services at adequate rates.[23] As we have said repeatedly, "if the goal of 'universal service' means anything, it must mean that the service offered is actually affordable enough for users to benefit from it."[24] Affordability is critical to promoting universal service, a policy the Commission considers the "cornerstone of the law that established the FCC."[25] The Commission has acknowledged the connection between affordability and adoption in other proceedings, stating that "broadband that is more

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[22] AARP Comments at 2; Comments of Appalachian Regional Commission, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, at 2 (Oct. 26, 2015)("ARC Comments")(highlighting the importance of rural services at comparable prices to their urban counterparts); CWA Comments at 4; Comments of Disability Coalition for Technology Transition, GN Docket No. 13-5, at 2 (Oct. 26, 2015)("Disability Coalition Comments"); Comments of Edison Electric Institute, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, at 6 (Oct. 26, 2015)("EEI Comments");Comments of Michigan Public Service Commission, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, at 12 (Oct. 26, 2015)("MPSC Comments"); Comments of The National Association of State Utility Consumer Advocates (NASUCA), GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, at 14 (Oct. 26, 2015)("NASUCA Comments"); Nebraska Public Service Commission, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, at 3 (Oct. 26, 2015)("NPSC Comments"); Utilities Telecom Council, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593, at 6 (Oct. 26, 2015)("UTC Comments").

[23] The Commission is organized "[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nationwide, and world-wide wire and radio communication service with adequate facilities *at reasonable charges*. . ." 47 U.S.C. 151 (emphasis added).

[24] Comments of Public Knowledge, Appalshop, Benton Foundation, Center for Media Justice, Center for Rural Strategies, Common Cause, the Greenlining Institute, Media Action Center, Media Literacy Project, National Consumer Law Center, On Behalf of Its Low-Income Clients, New America's Open Technology Institute, Rural Broadband Policy Group, and Turn (The Utility Reform Network), GN Docket No. 13-5 et al. (Feb. 5, 2015) pp. 12-13.

[25] See FCC Universal Service Website, *available at* https://www.fcc.gov/encyclopedia/universal-service

affordable is more likely to be adopted (and contribute to demand) than broadband that is not affordable."[26] In the 2014 NTIA Digital Nation Report, NTIA found that the second highest reason for not subscribing to broadband was the Internet is "too expensive."[27]

If consumers cannot afford the substituted service and therefore do not adopt it, that substituted service should not be deemed adequate. Such a policy runs the risk of leading to de facto discontinuance by customers especially in markets where no other service providers are available in that area.[28]

Transmission capability should also not be ignored. Public Knowledge agrees with NASUCA's statement that the decision to exclude adequate transmission capability from the proposed 214 criteria "assumes that the customers affected by a section 214 application have bargaining power and a true choice of competitive alternatives."[29] Contrary to ILEC's generalizations, "Rural customers do not have the ability to 'reach agreement on services with a wide range of transmission capabilities.'"[30]

III. CONCLUSION

For the reasons stated above, the Commission should adopt the proposed eight-point checklist with benchmarks proposed by AARP, reject Verizon's safe harbor proposal, and reconsider its decision to exclude affordability and transmission capability from its 214(a) considerations.

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[26] Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment; GN Docket Nos. 14-126 et al. (February 4, 2015) ¶147, emphasis added.
[27] *Id.*
[28] MPSC Comments at 12.
[29] Comments of The National Association of State Utility Consumer Advocates (NASUCA), GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (Oct. 26, 2015) at 14.
[30] NASUCA Comments at 14.

Respectfully submitted,

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PUBLIC KNOWLEDGE