

**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 ASSOCIATION OF STATE
UTILITY CONSUMER ADVOCATES AND THE MARYLAND OFFICE OF
PEOPLE’S COUNSEL ON FURTHER NOTICE OF PROPOSED
RULEMAKING**

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EXECUTIVE SUMMARY

The National Association of State Utility Consumer Advocates (“NASUCA”) and the Maryland Office of People’s Counsel (“OPC”) (together, “Joint Commenters”) reiterate their general support for the consumer protections adopted in the Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking (“FNPRM”) released by the Federal Communications Commission (“FCC” or “Commission”) in these dockets. The FCC’s proposals are consistent with 47 U.S.C. § 214(a).

In these Reply Comments, the Joint Commenters respond to specific incumbent local exchange carriers’ (ILECs’) proposals that do not uphold the consumer protections enshrined by Congress in the Communications Act of 1934. The Joint Commenters also offer recommendations to the Commission that will support a transitional plan that promotes the public’s safety and welfare, and ensures consumers have access to reliable and affordable service. Finally, the Joint Commenters support a standardized national service quality reporting system for residential service, with certain safeguards as discussed below, as a way of protecting new and existing consumers during the transition.

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I. Introduction

The National Association of State Utility Consumer Advocates (“NASUCA”)¹ and the Maryland Office of People’s Counsel (“OPC”)² (together, “Joint Commenters”) submit these reply comments, and reiterate their general support for the consumer protections adopted in the Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking (“FNPRM”) released by the Federal Communications Commission (“FCC” or “Commission”) in these dockets.³ Joint Commenters respond to certain initial comments, particularly those concerning: (1) recommendations by the ILECs to pare back safeguards based on various factually unsupported arguments; (2) the criteria for determining whether substitutes are adequate, (3) the impact of the technology transition on incumbent carriers’ *existing* services; and (4) customer notice and education.

The Incumbent local exchange carriers (“ILECs”) protest the Commission's imposition of additional consumer protection measures on the following grounds: purportedly such measures will deter investment;⁴ skew the competitive playing field by singling out ILECs for unique obligations that instead, if imposed at all, should be

¹ NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

² MD OPC is an independent Maryland State agency that represents the interests of residential utility consumers, including telecommunications consumers.

³ FCC 15-97 (rel. August 7, 2015). NASUCA submitted initial comments in these proceedings. Susan M. Baldwin contributed to these reply comments.

⁴ See, e.g., CenturyLink at 4-5; AT&T at 5.

addressed in general industry-wide rulemakings;⁵ improperly rely on 47 U.S.C. § 214 (“Section 214”) for legal justification;⁶ and are unnecessary because, by virtue of having chosen wireless and cable-based voice over Internet protocol (“VoIP”) services, consumers have demonstrated that alternatives provide adequate substitutes to legacy services, thus rendering any new criteria superfluous.⁷ In brief, Joint Commenters respond to these arguments as follows:

- ILECs often either raise the threat of withholding investment if regulators impose obligations for and regulation of ILECs’ operations, or conversely, ILECs promise “extra” investment if granted regulatory leeway. History has shown, however, that when ILECs make investment promises based on the relaxation of regulatory oversight or granting of franchises, they do not fulfill such investment promises⁸ or instead re-cast them to benefit their own business objectives.⁹
- Because ILECs are carriers of last resort (“COLR”) and benefit uniquely from historic incumbency advantages (e.g., free access to public rights of way, free easements across millions of parcels of private real property, decades of monopoly wholesale and retail access to consumers to construct and maintain networks, free valuable wireless licenses given to the Regional Bell Operating Companies (“RBOCs”), etc.), it is entirely appropriate that ILECs bear unique obligations.
- Although Joint Commenters encourage the FCC’s imposition in the future of consumer protection safeguards on other telecommunications suppliers (e.g., wireless, VoIP over cable companies’ facilities), the expansion of Section 214 criteria for ILEC applications to discontinue service should not be delayed while awaiting any future rulemakings.
- The ILECs’ misconstrue Section 214(a) of the Telecommunications Act.
- Finally, in their emphasis on consumers’ uptake of new services as evidence that these new services constitute adequate substitutes, ILECs fail to recognize that

⁵ CenturyLink at 5; AT&T at 5.

⁶ See, e.g., AT&T at 3; CenturyLink at 4; Verizon at 5..

⁷ AT&T at 7; CenturyLink at 1-2; Verizon, at 2.

⁸ Verizon FiOS Implementation Final Audit Report, June 18, 2015, NYC Information Technology & Telecommunications, Bill de Blasio, Mayor Anne Roest, Commissioner, Final Audit Report – Verizon New York.

⁹ See Section III.B.1., below.

consumers’ “choices” were often predicated on ILECs’ failure to maintain legacy services, ILECs’ aggressive and misleading marketing of triple-play services, and ILECs’ failure to advertise and affirmatively offer basic legacy services. ILECs have skewed the market outcomes and consumers’ “preferences.” Moreover, consumers who continue to prefer legacy services have logical and valid reasons for their preferences. Such consumers include the nation’s most vulnerable citizens – such as senior-citizens who disproportionately rely on legacy services, or consumers living in rural areas where wireless service is unreliable or unavailable, and consumers living in households seeking to minimize their telecommunications bills, or households (perhaps with sick or infirm members) that place a premium on services that function during prolonged power outages.

Joint Commenters welcome new technologies and more consumer options. Yet the FCC, in collaboration with state regulators, must guide the process to ensure that essential consumer protections are not lost during the transition.

II. Responses to the Incumbent Carriers’ Proposals

A. Contrary to the ILECs’ positions, consumer protection measures remain essential.

The measures that ILECs characterize as barriers, obstacles, and roadblocks to their transition to new technologies,¹⁰ are more properly described as essential safeguards for consumer protection, network reliability, and competitive neutrality. Consequently, as mentioned above, the FCC should view skeptically ILECs’ attempts to barter relaxed regulatory oversight of their technology transition for purported additional investment in new services. For example, rural consumers value the reliable legacy services that ILECs seek to eliminate. ILECs have not provided evidence proving the purported cost burden associated with maintaining these services. Further, the deployment of wireless broadband services (offered at expensive, metered rates) does not justify neglecting these reliable legacy services.

¹⁰ See e.g., AT&T at 1-2. See also *id.*, at 3, referring to “a slew of regulatory hurdles.” See also Verizon at 1.

The incumbent carriers also suggest that the FCC is too focused on services that they claim few consumers are buying.¹¹ According to AT&T, consumers “would not have abandoned TDM services in droves” if they had not found adequate substitutes.¹² This argument ignores the reality of “forced migration” and de facto retirement, both of which have caused incentives for customers to move to services with lesser service quality and reliability.

B. The FCC should reject CenturyLink’s proposal to allow carriers to self-certify based on the availability of alternative services.

CenturyLink proposes that the Commission “establish a rebuttable presumption that each of these services—interconnected VoIP, 3G/4G wireless, ‘CAF-qualifying’ fixed wireless service, and TDM voice service—is a reasonable substitute for traditional telephone service.”¹³ However, CenturyLink’s proposal is based on the flawed assumption that the choices of many consumers to migrate to new services means that all consumers must migrate away from the existing legacy services, and that the availability of new services is sufficient to justify the discontinuance of the legacy service still relied upon by millions of consumers.

CenturyLink’s contention rests upon the presumption that the Section 214 process has worked well in promoting the public interest, and that even “forced migrations” away from legacy technology should be treated as proof the new technology should be substituted for existing networks.¹⁴ Unfortunately, the Section 214 process has not worked as well as CenturyLink suggests. For example, *eight* months after Hurricane

¹¹ See AT&T at 2; Verizon at 2; CenturyLink at 1-2.

¹² AT&T at 7.

¹³ CenturyLink at 3, citation omitted.

¹⁴ *Id.* at 4.

Sandy destroyed copper plant in parts of Fire Island and New Jersey, Verizon submitted its Section 214 application to discontinue service.¹⁵ In support of its contentions, CenturyLink insists that the Fire Island circumstance was rare and therefore not indicative of the more typical Section 214 applications.¹⁶ But, it is clear in the cases of Fire Island and the New Jersey Barrier Islands, that industry failed to self-regulate, to the detriment of customers. This casts doubt on the reasonableness of arguments that in a Section 214 process ILECs should decide which key technology transition issues merit regulatory scrutiny. It is precisely because carriers do not have a track record or an incentive to bring consumer-affecting technology transition matters to regulators' attention that self-certification should be rejected.

C. CenturyLink's concerns about constraints on ILECs' exit from markets are unjustified.

CenturyLink, pointing to the importance of ease of exit from markets as key to competitive markets, opposes the proposed rules.¹⁷ Contrary to CenturyLink's assumption, local markets are not fully competitive, as evidenced by the continuing investigations by state public utility commissions into incumbent carriers' request for competitive classification of basic service and the affordability of basic service.¹⁸ Free exit from the enduring values of the 1934 and 1996 Acts was deliberately and explicitly

¹⁵ See Applications by Verizon New York and Verizon New Jersey pursuant to Section 214(a) of the Communications Act and 46 C.F.R. § 63.71 (June 7, 2013).

¹⁶ CenturyLink at 6.

¹⁷ Id. at 9-10.

¹⁸ See, e.g., Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of all Retail Services in Certain Geographic Areas, and for a Waiver of Regulation for Competitive Services, Pennsylvania PUC Docket Nos. P-2014-2446303 and P-2014-2446304; The Utility Reform Network, Complainant vs. Pacific Bell Telephone Company D/B/A AT&T California (U1001C); AT&T Communications of California, Inc. (U5002C), Defendants, Case No. 13-12-005, Complaint of the Utility Reform Network Regarding Basic Service Rates of AT&T California (Public Utilities Code Section 1702; Commission Rule of Practice and Procedure 4.1(b)), December 6, 2013,

limited by Congress. The FCC, through policy set in this proceeding, should not prejudge states' assessment of the status of local competition by presuming the existence of effective competition.

CenturyLink further contends that the requirement for adequate substitutes despite the “wealth of alternatives” would lead to an “arbitrary and capricious” outcome.¹⁹ CenturyLink’s reliance on the availability of wireless and VoIP services does not demonstrate a wealth of adequate alternatives. The fact that a significant number of households continue to choose basic legacy service – indeed, in CenturyLink’s words, “vote with their feet”²⁰ to rely on legacy networks –demonstrates that for these households adequate alternatives do not exist. The result of the proposed rules, far from being arbitrary and capricious as CenturyLink suggests, would promote public safety and welfare.

While Joint Commenters are hopeful that advances in technology will lead to alternatives that are as reliable and as affordable as is basic legacy phone service, those alternatives are not yet present in the retail residential marketplace. Forcing customers to migrate prematurely would eliminate an important incentive for industry to develop such attributes for newer services. By retaining properly-maintained legacy services as an option for consumers who choose to remain with such services until alternative services are adequate substitutes, the FCC is sending an important, undiluted economic signal to industry that consumers should not be forced to migrate to options that are less reliable or unaffordable. That outcome is neither arbitrary nor capricious.

¹⁹ CenturyLink at 10.

²⁰ Id. at 11.

D. The Commission should reject Verizon’s proposed “safe harbor” test.

Verizon proposes a “safe harbor” test that would allow ILECs to discontinue service if the discontinuance would not result in the termination of the end user’s ability to call 9-1-1, and if one or more of six possible conditions are met. For example, under Verizon’s proposal, if there is 9-1-1 service, discontinuance of basic service would be permitted if Verizon determined that fewer than 5% of customers in the affected geographic area subscribe to the service, or if there is another provider that offers substantially the same service in the same area, or if there have been no new orders for the service during the past 6 months.²¹ As proposed by Verizon, only *one* of its six proposed conditions would need to be met (in addition to the end user having the ability to call 9-1-1), for a legacy service to be terminated.

Rather than being an objective test, Verizon’s safe-harbor tests are tantamount to rewarding ILECs for driving down demand for basic local phone service through basic service rate increases,²² aggressive marketing of bundles,²³ delayed (or non-existent) repair of basic dial tone service,²⁴ and probable failure to affirmatively inform consumers

²¹ Verizon at 4.

²² The Utility Reform Network, Complainant vs. Pacific Bell Telephone Company D/B/A AT&T California (U1001C); AT&T Communications of California, Inc. (U5002C), Defendants, Case No. 13-12-005, Complaint of the Utility Reform Network Regarding Basic Service Rates of AT&T California (Public Utilities Code Section 1702; Commission Rule of Practice and Procedure 4.1(b)), December 6, 2013.

²³ Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modification to Service Quality Rules, Rulemaking 11-12-001, Amended Response of the Communications Workers of America, District 9, on the Emergency Motion of TURN Urging the Commission to Take Immediate Action to Protect Verizon Customers and Prevent Further Deterioration of Verizon’s Landline Network, April 16, 2014, Attachment A, Declaration of Ellen West..

²⁴ “CWA Petitions Maryland Public Service Commission to Investigate Verizon Service Quality,” November 19, 2015, <http://www.cwa->

about the continuing availability of legacy services. Verizon has been able to diminish demand for basic service – thus helping it eventually meeting its proposed criterion of having fewer than 5% of customers subscribing to basic phone service. By failing to advertise basic local phone service and through its sales scripts, Verizon can steer prospective customers to its other products, helping to achieve its proposed criterion of no new orders in the past six months. The FCC should reject Verizon’s proposal out of hand unless and until the FCC has audited ILEC (including Verizon) sales practices and timeliness of basic service repair.

III. JOINT COMMENTERS’ REITERATION OF SECTION 214 PRINCIPLES THAT SUPPORT THE PUBLIC INTEREST

A. Criteria for Adequate Substitutes for Legacy Services

For a service to be considered an adequate substitute for the legacy (a/k/a POTs) service, the alternative service must be affordable and ubiquitously available. It must be offered by a provider that is an eligible telecommunications carrier offering Lifeline and with an obligation to fulfill COLR obligations (including service quality). Further, it must be at least as adequate (and affordable), especially for the disabled community, as are existing technologies, and at least as reliable as the legacy service for which it is a purported substitute. Further, the service must be compatible with competition.

Moreover, carriers seeking to withdraw service should bear the burden of proving that they meet FCC-established criteria, and stakeholders should be afforded adequate

http://www.fcc.gov/newsroom/recordings/cwa_petitions_maryland_public_service_commission_to_investigate_verizon_ser#.V_k9danarTBQ; California Public Utilities Commission (“CPUC”) Decision 15-08-041 Affirming Commission Direction to Conduct the Network Evaluation Study Originally Ordered in Decision 13-02-023 signed by the Commission at its August 27, 2015 Commission Meeting, <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M154/K320/154320362.PDF>.

opportunity to comment on such proposed service withdrawals through a fully noticed Administrative Procedure Act-compliant proceeding. Applications should not be deemed granted: the public interest in this respect outweighs carriers' interest in regulatory certainty.²⁵ It is consumers, not ILECs, who are in the best position to assess whether purported alternatives have the functionality and price that constitute adequate substitutes.²⁶ Similarly, first responders can uniquely assess whether alternative services are compatible with Public Safety Answering Point ("PSAP") and 9-1-1 services requirements. Judgments about PSAP and 9-1-1 service requirements made by government agencies charged with public safety, and by associations like the Association of Public-Safety Communications Professionals ("APCO"), are uniquely valuable, particularly as our society endures extreme weather, confronts unpredictable acts of terrorism, and adopts new technologies.²⁷

Joint Commenters urge the Commission to allow adequate time for public safety and medical responders to review and analyze proposals to withdraw legacy service and substitute alternative services. In no event should the transition to new technologies jeopardize the nation's hard-earned, century-long efforts to construct and maintain a network that supports ubiquitous reliable communication among its citizens and public safety agencies, not only on sunny days but also during times of individual and community crises, extreme weather and national emergency.

²⁵ See, e.g., AT&T at 14-15.

²⁶ Greenlining Institute at 3.

²⁷ Compatibility with existing alarm systems is an important element of public safety as carriers transition to new services. See generally comments of ADT LLC d/b/a ADT Security Services.

B. The Comments Support Joint Commenters' Proposed Criteria for Section 214 Review

1. The FCC should adopt affordability as a criterion.

Initial comments demonstrate that the FCC should include affordability as an essential criterion in its assessment of whether adequate substitute services are available.²⁸ Joint Commenters concur with comments that emphasize the importance of seeking reasonable comparability of services (including prices) in rural and urban areas, and the importance of ensuring that services are affordable to all.²⁹ Carriers have failed to demonstrate why rural areas should lose the copper networks that are in place before reliable substitute services are ubiquitous in these sparsely populated communities.

AT&T's position that the Commission's proposed process, which AT&T contends could require wireless network service quality to measure up to the reliability of legacy wireline networks and therefore discourage wireless broadband investment in rural areas,³⁰ relates to the affordability of services. AT&T's arguments on this point conflate distinct matters. Customers residing in sparsely populated areas depend critically on reliable voice connections to reach public safety and should not be exposed to the risk of degraded or impaired reliability. And the deployment of broadband to rural areas is a complex matter. Although of course wireless broadband in a rural community is better than no broadband, it is certainly not equivalent to wireline broadband because it is metered, making it far less affordable.³¹

²⁸ See, e.g., Communications Workers of America at 2, 4-5; Greenlining Institute at 2, 4-5; AARP at 4-5; Michigan Public Service Commission at 11-12.

²⁹ CWA at 5-6.

³⁰ AT&T, at 11.

³¹ AT&T and Verizon control two-thirds of the nation's wireless markets. **Cite to CMRS report. The high concentration in wireless markets does not yield just and reasonable, affordable rates.

For example, a consumer petitioned the Pennsylvania Public Utility Commission (“PA PUC”) to require Verizon to deploy digital subscriber line (“DSL”) service in fulfillment of its “Chapter 30” network modernization plan. However, in 2012, rather than deploy DSL to a community that had satisfied the Chapter 30 bona fide request requirements pursuant to Chapter 30, at the eleventh hour Verizon Pennsylvania offered the community a more expensive 4G LTE wireless broadband option to fulfill Verizon’s broadband deployment requirements. Despite opposition by a consumer and by the Office of Consumer Advocate to this alternative, the PA PUC ultimately permitted Verizon to engage in this last-minute, improperly-noticed substitution. This resulted in consumers being forced to subscribe to the more expensive wireless broadband option rather than the wireline DSL they sought.³² If competition were effective, Verizon would have deployed what consumers wanted, or another supplier would have stepped up to offer the wireline broadband Internet access that the community wanted, rather than the consumers being forced to take what they were offered, rather than the service available elsewhere that they wanted.

2. Technology transitions should neither raise costs nor diminish functionality for seniors and disabled consumers

Affordability is an essential criterion in assessing the adequacy of substitute services particularly for seniors and disabled consumers who are more likely to have low or fixed incomes. It is also important for technological transitions not to diminish the functionality of specialized equipment used for healthcare or accessibility purposes. Joint

³² In Pennsylvania, in response to consumers’ request for broadband service, Verizon offered 4G LTE rather than the DSL that consumers had anticipated receiving. In contrast with DSL service, 4G LTE has data caps and therefore is a more expensive way to obtain broadband access to the Internet. *Petition of David K. Ebersole, Jr. and the Office of Consumer Advocate for a Declaratory Order*, Pennsylvania PUC P-2012-2323362, *Final Order*, February 28, 2013; *Petition of David K. Ebersole, Jr. and the Office of Consumer Advocate for a Declaratory Order*, Pennsylvania PUC P-2012-2323362, *Dissenting Statement of Commissioner James H. Cawley*, February 28, 2013.

Commenters concur with those who emphasize that consumers with disabilities and who rely on specialized equipment to communicate effectively over the public telecommunications network should be able to communicate just as effectively after the transition to newer technologies.³³ These consumers should not be forced to incur new costs to make the transition. Moreover, the burden to demonstrate that substitute services provide the same or greater functionality at no additional cost to the disabled community should be borne by the ILEC filing the Section 214 application. The FCC should not rely on after-the-fact tests of such purported adequate functionality and affordability and instead, should consider trials with voluntary participation.³⁴

3. Service Quality

The ILECs' positions fail to acknowledge the existing incentives for them to neglect legacy services during the transition to new technology. Joint Commenters reiterate support for the FCC's proposal to require carriers to demonstrate that alternative services meet state-established minimum service quality standards and to apply federal standards to those Section 214 applications in states lacking minimum service quality standards.³⁵ Because of the compelling economic incentives that carriers have to neglect their copper networks,³⁶ when regulators operate in an information vacuum, consumers

³³ See, e.g., CPUC, at 10-11; Michigan Public Service Commission ("MPSC") at 6-7.

³⁴ See, e.g., CPUC at 12.

³⁵ FNPRM, ¶ 218.

³⁶ Verizon's apparent under-investment in the non-FiOS portion of its California network caused in-depth focus by the CPUC in its multi-year service quality investigation (which also raised concerns about AT&T's legacy network) and in the context of the CPUC's investigation of Verizon's proposed sale of its California footprint to Frontier. CPUC Decision 15-08-041 Affirming Commission Direction to Conduct the Network Evaluation Study Originally Ordered in Decision 13-02-023 signed by the Commission at its August 27, 2015 Commission Meeting; In the Matter of the Joint Application of Frontier Communications Corporation, Frontier Communications of America, Inc. (U 5429 C), Verizon California Inc. (U 1002 C), Verizon Long Distance, LLC (U 5732), and Newco West Holdings LLC for Approval of Transfer of Control Over Verizon California Inc. and Related Approval of Transfer of Assets and Certifications (Filed March 18, 2015), Application 15-03-005. See also FNPRM at ¶ 92.

are especially at risk of service degradation and impairment.

Accordingly, Joint Commenters urge the FCC to impose public, semi-annual service reliability reporting requirements on incumbent carriers.³⁷ These new, streamlined reports should include, at a minimum: residential trouble report rates; percent of residential out-of-service troubles cleared with 24 hours; percentage of service affected longer than 48 hours; average residential repair time; average installation time; and average answer time for residential calls to the repair bureau. Non-functioning dial tones are unreliable dial tones. The data should also be disaggregated between VoIP services and non-VoIP services. Informed consumers make more efficient purchasing decisions, contributing to a better-functioning market; and informed regulators can assess where market imperfections may persist, thus justifying this regulatory spotlight.

Moreover, because many states have stopped collecting service quality data,³⁸ the FCC must make carriers accountable for not allowing their existing services to degrade by strictly scrutinizing carriers' inadequate service quality.³⁹ Moreover, carriers should be penalized for neglecting their existing networks when they anticipate filing Section 214 applications.

A streamlined service quality reporting mechanism could be used to provide the foundation and information for a requirement that incumbent carriers meet minimum service quality standards for at least one year before they are allowed to file Section 214 applications for any given area. The public interest inherent in a standardized national service quality reporting system for residential service (the consumers of which lack any

³⁷ See also CWA at 8-9.

³⁸ See, e.g., Greenlining Institute at 4.

³⁹ See, e.g., MPSC at 4-5, observing that "Michigan is a state that no longer has service quality standards due to deregulation," and supporting FCC standards.

bargaining power) far outweighs the burden to incumbent carriers of submitting information to the FCC that carriers likely collect already for internal purposes.⁴⁰ The FCC should not implicitly permit the transition to become an industry excuse for neglecting existing networks⁴¹ – therefore a countervailing measure is essential to protect consumers during the transition. Joint Commenters therefore propose requiring at least twelve (12) successive months of adequate residential service before a carrier’s Section 214 application may be granted.

Joint Commenters additionally supports the proposed requirement that *new* substitute services meet minimum service quality standards,⁴² but also urge the FCC to ensure that *existing* services also meet minimum service quality standards. Where states have discontinued service quality oversight, it is of paramount importance that the FCC demonstrate its commitment to preventing the degradation and impairment of all services, whether new or old.⁴³

4. Customer Notice and Education

AT&T states that Section 214 customer notifications should be permitted to “be sent via email or via any other means to which the customer has agreed in the terms of service or contract applicable to the service being discontinued.”⁴⁴ As the California

⁴⁰ If, as incumbent carriers often profess, local markets are competitive, one would assume that carriers would collect service quality data for their own purposes in order to attract and retain customers.

⁴¹ See “CWA Petitions Maryland Public Service Commission to Investigate Verizon Service Quality,” November 19, 2015, http://www.cwa-union.org/news/entry/cwa_petitions_maryland_public_service_commission_to_investigate_verizon_ser#.Vk9danarTBQ.

⁴² FNPRM, ¶ 218.

⁴³ Joint Commenters concur with the CPUC that “[s]tate commissions are better able to determine the needs of the affected community and what their residents have come to expect from the telecommunications services they receive.” CPUC at 10. .

⁴⁴ AT&T at 17.

Public Utilities Commission ("CPUC") observes, not everyone has and uses e-mail.⁴⁵ Joint Commenters concur with the CPUC that carriers should use whatever mechanism they use for billing purposes.⁴⁶ The Michigan Public Service Commission ("MPSC") aptly observes that email may end up in a junk folder or be sent to an email address that is not being used.⁴⁷ Joint Commenters concur with the MPSC that "[e]nd user customers are likely not expecting a message of this nature so regardless of the delivery method, the language used should be clear and direct."⁴⁸

Joint Commenters also echo Greenlining's support for the Commission's proposal, as part of its Section 214 review, to consider "whether the carrier has an adequate customer education and outreach plan."⁴⁹ AT&T's argument that the Commission should not be "flyspecking [carriers'] customer education materials"⁵⁰ is not persuasive because of the significance of the information being conveyed and the importance of unbiased review of industry's educational materials.

Joint Commenters support Greenlining's recommendation that the Commission require carriers' communications regarding the discontinuance of a service or availability of a substitute service to be available in languages other than English, and at a minimum, in any language that the customer's state publishes its voter guides.⁵¹

⁴⁵ CPUC at 17.

⁴⁶ Id.

⁴⁷ MPSC at 13.

⁴⁸ Id.

⁴⁹ Greenlining at 6, citing FNPRM at para. 234.

⁵⁰ AT&T at 17.

⁵¹ Greenlining at 6.

IV. THE FNPRM PROPOSALS ARE WITHIN THE FCC'S AUTHORITY UNDER SECTION 214(A).

Among the contentions that the FNPRM proposals are unlawful,⁵² Verizon argues that

Section 214 was written to ensure that that customers and communities are not completely cut off from communication; 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).⁵³

To support this argument, Verizon cites cases that were decided well before the current technology transition (and dependent on the technology of that time) and ignores the current changes that are the subject of this proceeding.⁵⁴ Contrary to Verizon's argument, Congress did not modify Section 214(a) in the 1996 Telecom Act, balancing competition and consumer protection, and showing that Congress' concern was not just for "complete cut-offs" of service in the new competitive environment.

CenturyLink argues four points:

This new framework ... would prevent ILECs and other POTS providers from exiting the market in at least some circumstances; it would require a substitute service to have identical characteristics to the one being discontinued; it would ignore the availability of reasonably comparable substitute services provided by third parties; and it would be irreconcilable with Section 254 and the Commission's CAF rules.⁵⁵

CenturyLink's citations – like Verizon's – are either to antique cases, or are to specialized services that bear little resemblance to the residential basic service being

⁵² E.g., AT&T at 3.

⁵³ Verizon at 5, citing its own February 6, 2015 comments and cases cited therein.

⁵⁴ Similarly, the Open Internet Order recognized the transition in adopting the Open Internet Rules. *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC No. 15-24 (rel. Mar 12, 2015).

⁵⁵ CenturyLink at 4.

addressed here.

CenturyLink's comments on these legal issues are the most extensive of the ILECs. Thus CenturyLink also identifies what it calls a

fundamentally flawed legal and economic premise—namely, that the commission's role in facilitating the IP transition is to perpetuate the specific characteristics (and costs) associated with the legacy PSTN rather than facilitating a shift to the services and features that customers actually demand.⁵⁶

The attacks miss the point: The Commission's role in facilitating the IP transition is to ensure that consumers' basic service does not decline, thus facilitating a shift to equal **or better** services and features that customers actually demand.⁵⁷ Customers should not be required to accept inferior services in this transition.

CenturyLink also asserts that “[i]n considering petitions to discontinue service, the Commission has always looked to the availability of a ‘reasonably comparable’ alternative, rather than an exact substitute, for the service being discontinued.”⁵⁸ This is true, but contrary to CenturyLink's (and AT&T's⁵⁹) view, the FNPRM's rules do not look to exact substitutes: they look to substitutes that are of equal or greater value. That is not too much to ask when basic service, which is still of immense value to society, is sought to be withdrawn, instead of some ancillary service. And the FNPRM does not “unreasonably discount” the other four factors in the Commission's traditional test.⁶⁰

CenturyLink only dilutes its position when it argues that detailed performance criteria are not important now because “the Commission felt no need to require USF-

⁵⁶ Id. at 11.

⁵⁷ Not having been upsold to. See Section II.D. above.

⁵⁸ CenturyLink at 11.

⁵⁹ AT&T at 6.

⁶⁰ CenturyLink at 12.

supported voice services to comply with detailed performance criteria....”⁶¹ Without agreeing with the Commission’s USF holding, it is easy to note that the impact on consumers of basic service withdrawal is substantially more direct than the failure to grant USF funding for a price cap ILEC’s area.

AT&T complains that the FCC has not specified how long the rules will last.⁶² In telecommunications, nothing is in “perpetuity.”⁶³ As discussed in Section III above, the rules should apply until there is a ubiquitously available service that is an adequate substitute for the basic service that the ILECs want to withdraw.

Finally, in another direction, Joint Commenters agree with the PA PUC that “[t]he FCC should avoid any result that obviates or supercedes independent state law on any process similar to Section 214.”⁶⁴ As PA PUC states, “the Commission must recognize independent state law and should allow the state commissions to evaluate an ILEC’s technological transition to ensure it complies with any applicable state requirements.”⁶⁵ The regulation of telecommunications is a partnership between the FCC and the states.

V. CONCLUSION

Joint Commenters support the FCC’s establishment of clear rules of the road to guide the nation’s transition from old technologies to new ones. However, Joint

⁶¹ Id. at 19, internal citation omitted.

⁶² AT&T at 6.

⁶³ Id.

⁶⁴ PA PUC at 7.

⁶⁵ Id. at 9.

Commenters urge the FCC to ensure that its goal of providing certainty to guide industry's capital investment and business planning decisions not justify a hasty transition that sacrifices consumer and public safety protection. Discontinuing today's reliable, ubiquitous affordable service in the name of technological progress could jeopardize public and personal safety as inadequate substitutes replace adequate ones. That result would disserve consumers and communities at the time when unpredictable weather patterns and global events, and frequent national and international events implicating public safety, underscore the need for a robust and resilient public network. Moreover, it is essential that stakeholders – including consumers, competitors, communities and first responders – be afforded the opportunity to assess whether applications for service discontinuance are fully supported with evidence to show compliance with the statutory requirement set forth in Section 214(a):

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.

The burden should rest squarely with the ILECs that seek to discontinue service to demonstrate that their applications will not adversely affect either “the present or future public convenience and necessity.” Finally, Joint Commenters urge the FCC to take immediate steps to establish accountability and incentives so that incumbent carriers do not impair or degrade their *existing* services as they prepare for and implement transitions to new technologies.

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