

**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

REPLY COMMENTS OF GVNW CONSULTING INC.

GVNW Consulting, Inc. (“GVNW”)¹ supports the comments of NTCA, WTA, ERTA and NECA² (the “Rural Associations”) in the above-captioned proceeding with respect to the lack of need to file section 214 discontinuance applications when small rate-of-return regulated local exchange carriers (RLECs) upgrade, or are planning to upgrade, their networks from TDM to IP technology. GVNW previously commented on this issue in a written *ex parte*

¹ GVNW Consulting, Inc. is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, intercarrier compensation reform, and strategic planning for communications carriers in rural America.

² See Comments filed October 26, 2015 of NTCA – The Rural Broadband Association, WTA – Advocates for Rural Broadband, Eastern Rural Telecom Association, and the National Exchange Carrier Association, in *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, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 15-97 (rel. Aug. 7, 2015).

communication³ submitted to the Commission in support of the Petition for Reconsideration of the United States Telecom Association⁴ that raised the same issue – the possibility that small rural ILECs would be unable to determine whether it is necessary to file a section 214 request and thus would have to unnecessarily expend resources on such a filing instead of using those funds to improve and expand rural broadband facilities and services. GVNW’s concern is the same in both proceedings – the unnecessary regulatory risk for small ILECs of an ambiguous standard for the filing of an application for section 214 approval and the added expense of interacting with regulatory bodies – both of which could serve to discourage providers from building out fiber upgrades designed to benefit consumers.⁵ Further, the uncertainty of the time taken by the Commission to process section 214 requests could make difficult the adherence of small ILECs to timely build out requirements in conjunction with universal service funding or financing provided by the Rural Utilities Service.

The Commission has clearly recognized the important role of rural ILECs in bringing broadband to low-density expensive-to-serve rural America. It is counterproductive to require these carriers to complete complex nine-point analyses or to submit unnecessary section 214 applications prior to commencing network upgrades that will benefit rural America.

³ See *ex parte* of GVNW Consulting re *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications*, PS Docket No. 14-174; *Technology Transitions*, GN Docket No. 113-5; *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 (filed January 23, 2015).

⁴ See Petition for Reconsideration of the United States Telecom Association, PS Docket No. 14174 *et al.*, (filed Dec. 23, 2014).

⁵ The Commission itself expressed this concern in the Further Notice at ¶ 203 where it noted that uncertainty regarding the need to file section 214 discontinuance applications “could potentially impede the industry from actuating a rapid and prompt transition to IP and wireless technology.”

Small rural ILECs should be exempted from the section 214 requirements when such carriers plan to replace existing “legacy” TDM-based telecommunications services with advanced IP-based services. Even the “safe harbor” proposed by Verizon, while potentially appropriate for larger carriers, would still impose unnecessary complexity and costs on small rural ILECs whose level of operating expenses are continually a concern of the Commission.

I. Determining Whether Planned Service Changes are Discontinuance

The Commission should use this proceeding to clarify that any criteria it adopts for determining whether service changes are “discontinuance” under section 214 of the Act are not intended to add service obligations for carriers. As stated by the Rural Associations, “Congress did not intend this provision of the Act to be used by the Commission as a vehicle for imposing substantive new regulations or as leverage to require carriers seeking authority to discontinue legacy services to expand or increase alternative service offerings.”⁶ Moreover, Congress’ intent in adopting section 214 was to assure that customers do not experience reductions or impairments in service as a result of carrier-initiated network changes. Conversion of legacy TDM voice services to IP technology should not trigger the need for section 214 approval since these investments will enable advances, not reductions or impairments, in services offered by rural ILECs to their customers.

II. This Proceeding Should Not Impose New Service Standards on Carriers Upgrading to IP-Based Technology

As clearly stated in the comments of the Rural Associations, “if a new IP-based service meets the same standards as service provided using legacy TDM technologies, no “discontinuance” or “impairment” has occurred under section 214 and the inquiry ends there. A

⁶ See Comments of Rural Associations at 3.

new service should not be required to meet new standards or regulations that were not provided by prior service arrangements.” Section 214 reads in part “*Provided, however*, That nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided.”⁷ It is hard to imagine that the Commission’s effort to implement the fiberizing of America envisioned in the National Broadband Plan would be considered a discontinuance or impairment when implemented by an individual carrier.

AT&T addresses this issue in its discussion of the Commission’s proposal for determination of an “adequate substitute” – “This is not a proposal to gauge ‘adequacy.’ It is a proposal to mandate superiority and dictate the terms and conditions on which new, largely unregulated services are provided. If there is merit to any of the metrics the Commission has proposed, and the Commission has the authority to mandate those metrics, there is a path for the Commission to do just that – the rulemaking process. Hijacking the section 214 process and turning it into a vehicle for micromanaging service quality, functionality, and capabilities is not an appropriate or lawful exercise of the Commission’s authority.”⁸ Verizon agrees, noting “The Commission should not use service discontinuances as an invitation to revisit already well-established network deployments or to require minute descriptions of network performance when

⁷ 47 U.S.C. 214.

⁸ See Comments of AT&T filed October 26, 2015, in *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, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 15-97 (rel. Aug. 7, 2015) at 6.

those facilities are already widely deployed and the services they provide have been widely embraced by consumers who have choices.”⁹

AT&T also correctly argues that consumers have already made the judgment that IP-based services are superior to legacy TDM services by their choices in the marketplace.¹⁰

Moreover, as noted by AT&T, these requirements would apply only to ILECs who no longer provide a majority of the voice service in their service areas,¹¹ even in the areas served by rural ILECs.

⁹ See Comments of Verizon filed October 26, 2015, in *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, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 15-97 (rel. Aug. 7, 2015) at 6.

¹⁰ *Id.* at 7.

¹¹ *Id.*

III. Conclusion

Small rural ILECs should be exempted from the section 214 requirements when such carriers plan to replace existing “legacy” TDM-based telecommunications services with advanced IP-based services. Conversion of legacy TDM voice services to IP technology should not trigger the need for section 214 approval since these investments will enable advances, not reductions or impairments, in services offered by rural ILECs to their customers.

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