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 ALASKA RURAL COALITION

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I. Introduction.

The Alaska Rural Coalition[1] ("ARC") files its Reply Comments in this proceeding pursuant to the Further Notice of Proposed Rulemaking released by the FCC (the "Commission") on August 7, 2015 seeking comment on what would constitute an adequate substitute for retail services that a carrier seeks to discontinue in connection with the technology transition from copper to fiber.[2] The ARC appreciates the comments filed by other Alaska telecommunications providers in this docket,[3] as well as the comments filed by national trade organizations and state regulatory commissions.[4]

The ARC membership consists of most of the rate of return incumbent rural local exchange carriers ("RLECs") in Alaska, all of whom serve some of the highest cost areas of the nation.[5] ARC members are generally small, rural telephone companies and cooperatives that

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[1] The ARC is composed of Adak Telephone Utility, Alaska Telephone Company, Arctic Slope Telephone Association Cooperative, Inc., Bettles Telephone, Inc., Bristol Bay Telephone Cooperative, Inc., Bush-Tell, Inc., Circle Telephone & Electric, LLC, City of Ketchikan dba Ketchikan Public Utilities, Copper Valley Telephone Cooperative, Cordova Telephone Cooperative, Inc., Interior Telephone Company, Inc., Matanuska Telephone Association, Inc., Mukluk Telephone Company, Inc., North Country Telephone Inc., Nushagak Electric and Telephone Company, Inc., OTZ Telephone Cooperative, Inc., and The Summit Telephone and Telegraph Company, Inc.

[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 (rel. Aug. 7, 2015) ("*NPRM*").

[3] *See Technology Transitions, et al.*, GN Docket No. 13-5, *et al.*, Comments of Alaska Communications Systems, before the FCC (Oct. 26, 2015) ("*ACS Comments*"); *Technology Transitions, et al.*, GN Docket No. 13-5, *et al.*, Comments of AT&T, before the FCC (Oct. 26, 2015) ("*AT&T Comments*").

[4] *See Technology Transitions, et al.*, GN Docket No. 13-5, *et al.*, Comments of the Michigan Public Service Commission, before the FCC (Oct. 26, 2015) ("*MPSC Comments*"); *Technology Transitions, et al.*, GN Docket No. 13-5, *et al.*, Comments of NTCA – The Rural Broadband Association, WTA – Advocates for Rural Broadband, Eastern Rural Telecom Association, and the National Exchange Carrier Association, Inc., before the FCC (Oct. 26, 2015) ("*Rural Association Comments*").

[5] *See Connect America Fund*, WC Docket No. 10-90, Comments of the Alaska Rural Coalition, before the FCC (Dec. 22, 2014) at 2 ("The assumptions that apply to the Lower 48 cannot be easily or fairly applied to Alaska. The Commission must be cautious or it will impose requirements that will overwhelm carriers attempting to provide broadband in the most challenging environment and foreclose the expansion of quality, robust service."); *see also* Letter from T.W. Patch, Chairman, Regulatory Commission of Alaska to Marlene H. Dortch, Secretary, Federal Communications Commission, Connect

serve tribal lands and endeavor to bring the highest quality of service possible to Alaskans.[6] The ARC is pleased that the Commission and other commenters recognized that there is a continuing need to exempt small, rural carriers from onerous regulatory obligations that serve little purpose. The ARC urges the Commission to explicitly state that small companies are exempt from the proposed notice requirements, even if they have lost their rural exemption under 47 U.S.C. § 251(f).

II. The Commission must allow carriers to make changes to networks as technology advances.

The Commission proposed that when a carrier seeks authority to discontinue existing retail service to transition to newer technology, the Commission will assess compliance with an eight-part test.[7] As a part of this test, the Commission stated that it will require carriers to show the availability of similar service functionalities after the carrier discontinues its service.[8] ACS

America Fund, *et al.*, WC Docket No. 10-90, *et al.* (Filed Feb. 4, 2013) ("Our discussion touched on how Alaska's lack of roads and electric grids as well as other factors such as extensive reliance on satellite make application of national models to Alaska's service providers inappropriate. We also discussed how regulatory uncertainty is hampering Alaska's carriers' ability to invest and borrow the funds needed to move towards universal broadband.").

[6] *See* Auction 902 Tribal Mobility Fund Phase I, AU Docket No. 13-53, Comments of the Alaska Rural Coalition, before the FCC (May 10, 2013) at 4 ("*ARC Tribal Mobility Comments*") ("The Commission has recognized that 'infrastructure generally is less developed on Tribal lands, particularly in Alaska.' The cost of deploying mobile services in these areas of Alaska will be considerably greater because providers in the state face significantly higher costs for both ongoing operations and construction than do providers in the rest of the nation.").

[7] *NPRM* at para. 208 ("We propose that a carrier seeking to discontinue an existing retail service in favor of a retail service based on a newer technology must demonstrate that any substitute service offered by the carrier or alternative services available from other providers in the affected service area meet the following criteria in order for the section 214 application to be eligible for an automatic grant pursuant to section 63.71(d) of the Commission's rules: (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; (5) PSAP and 9-1-1 service; (6) cybersecurity; (7) service functionality; and (8) coverage.").

[8] *NPRM* at para. 229 ("We tentatively conclude that one criterion in any adequate substitute test that we adopt should be that the carrier must demonstrate in its section 214 application that any replacement offered by the requesting carrier or alternative service available from other providers in the

commented that the Commission cannot force carriers to preserve legacy services and facilities for a shrinking user base.[9] AT&T noted that the Commission's proposals could impede the deployment of broadband.[10] The ARC agrees with these commenters. The Commission cannot state that it supports the IP transition and that it will not force carriers to continue to provide every service indefinitely while simultaneously requiring that a carrier justify every planned network improvement.[11]

The ARC continues to believe that market conditions are the best indicator of whether consumers demand any particular service, and that the Commission should not require carriers to indefinitely support services that only a small minority of customers desire. ACS noted that there are already services where market conditions have determined that IP-based services are adequate substitutes.[12] The Commission should also recognize that carriers have a strong financial incentive to provide the easiest possible transition for their customers. The ARC agrees with ACS that "the Commission should focus its efforts on creating a federal policy framework that encourages carriers and customers alike to make a smooth, organic, and voluntary transition to next-generation services, rather than erecting new barriers to prolong the life of legacy

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relevant service area permit similar service functionalities as the service for which the carrier seeks discontinuance authority.").

[9] *ACS Comments* at 9 ("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.").

[10] *AT&T Comments* at 4 ("The Commission's proposals… would be affirmatively harmful because, if adopted, they would greatly impede the deployment of broadband infrastructure, especially in rural America. And if ILECs are not permitted to withdraw their TDM services and retire their TDM network when they deploy a replacement broadband network, that broadband network is far less likely to be built.").

[11] *NPRM* at para. 197 ("The Declaratory Ruling does not mean 'every prior feature no matter how little-used or old-fashioned, must be maintained in perpetuity' or that 'every functionality supported by a network is de facto a part of a carrier's 'service.'").

[12] *ACS Comments* at 8 ("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.'").

services that few customers truly prefer."[13] The Commission should not create rules that impede the technology transition solely to protect an ever-shrinking pool of legacy service customers.

III. The Commission must take further steps to exempt rural LECs from the Section 214 extended notice requirements.

The Commission sought comment on whether rural LECs should receive an exemption from the proposed criteria.[14] The Rural Associations noted "RLECs have traditionally focused on improving and expanding services to customers in difficult-to-serve rural areas, using a variety of technologies designed to overcome challenges caused by low subscriber density, difficult terrain, extreme weather conditions and other problems uniquely associated with rural areas."[15] Rural LECs were not traditionally required to seek Commission approval for routine network upgrades.[16] The ARC agrees with the Rural Associations and urges the Commission to amend the proposed rules so that they do not apply to rural LECs.

The Commission stated in the Local Competition Order that Congress recognized it would be unfair or inappropriate to apply every regulatory obligation to small, rural telephone companies.[17] The ARC appreciates that the Commission incorporated the existing Section 251

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[13] *ACS Comments* at 4-5.

[14] *NPRM* at para. 235 ("If we determine that it is appropriate to adopt any or all of the proposed criteria, should we include an exemption for some or all of them for rural LECs, as proposed by TCA?").

[15] *Rural Association Comments* at 6.

[16] *Rural Association Comments* at 6 ("By and large, they have not been required to expand resources analyzing whether specific network upgrades, reconfigurations or service rearrangements designed to take advantage of newer network technologies might somehow trigger a requirement to seek authorization from the Commission to discontinue services pursuant to section 214 of the Act.").

[17] *See Implementation of the Local Competition Provisions in the Telecommunications Act of1996, Interconnection between Local Exchange Carriers and Commercial mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996) at para. 1262 ("Congress generally intended the requirements in section 251 to apply to carriers across the country, but Congress recognized that in some cases, it might be unfair or inappropriate to apply all of the requirements to smaller or rural telephone companies.").

rural exemption into the NPRM,[18] but urges the Commission to go further. There are several rural LECs that may no longer take advantage of the Section 251 rural exemption but will nonetheless be unduly burdened by the new rules. The ARC has repeatedly discussed with the Commission that rural LECs simply cannot continue to face mounting regulatory obligations in an era of decreasing support and revenue.[19] The Commission should take this opportunity to exempt all rural LECs, not just those that still qualify for their section 251 exemption, from the reporting obligations.

Rural LECs who no longer have their section 251 rural exemption are, by definition, subject to competition within their service areas. Small, rural LECs do not have the market power to drive a competitor out of business simply by upgrading their networks. In competitive rural areas the Commission should allow market forces to determine whether a legacy copper network is still preferred by customers and interconnected carriers. The Commission should not be inhibiting the IP transition in rural markets, even if carriers in those markets have lost their section 251 rural exemption.

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[18] 47 U.S.C. § 251(f); *see* Information Collection Being Reviewed by the Federal Communications Commission, 80 Fed. Reg. 66003, 66004 (Oct. 28, 2015) ("Under section 251(f)(1) of the Act, rural telephone companies are exempt from the requirements of section 251(c) 'until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines… that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254…' The Commission has determined that the number of potential respondents set forth in the previous submission inadvertently failed to take this exemption into account.").

[19] *See, e.g.*, *Connect America Fund, et al.*, WC Docket No. 10- 90, *et al.*, Comments of Alaska Rural Coalition, before the FCC (Jan. 18, 2012) at 16 ("It defies public policy to impose additional administrative obligations to retain necessary support at the same time the Commission is decreasing critical support of operations expenses. The burden on small, rural companies is already difficult to manage. There is simply no margin or budget for more paperwork.").

As noted by the Rural Associations, there isn't any evidence that network changes from small, rural carriers had the effect of eliminating services to customers.[20] A six month advance notice requirement in all areas is unnecessarily onerous, but it is particularly problematic in rural areas. ARC members serve some of the most expensive and difficult to reach places in the country.[21] There is no reason why the smallest carriers in the United States should be forced to delay network upgrades for six months. Interconnected carriers cannot delay the transition to IP-based networks because they have not taken enough steps to plan for their own transitions.

IV. Tribal governments must be consulted, but the Commission must allow carriers flexibility.

The Commission asked whether it should extend the notice requirements to include Tribal governments.[22] The Michigan Public Service Commission commented that it supports inclusion of a requirement to notify Tribal governments.[23] The ARC agrees with the Michigan Commission, but urges the Commission to add flexibility into these notice requirements. As the ARC noted in its initial comments in this docket, all of Alaska is designated as Tribal land.[24] Carriers serving Tribal lands are required to meaningfully engage with Tribal governments at

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[20] *Rural Association Comments* at 7 ("The Rural Associations know of no RLEC network changes or upgrades that had the effect of reducing, eliminating or impairing service to their customers. Unless and until there is evidence that such service reductions have occurred, RLECs should not have to conduct a multi-point analysis of service factors to determine whether service is being "discontinued" or "impaired" in some manner.").

[21] *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Comments of the Alaska Rural Coalition, before the FCC (Aug. 8, 2014) at 32 ("Rate of return carriers serve the lease populated, highest cost areas of the Nation.").

[22] *NPRM* at para. 240 ("We therefore seek comment on including notice to Tribal governments as part of our section 214 discontinuance application process.").

[23] *MPSC Comments* at 13 ("The MPSC supports the inclusion of a requirement to notify Tribal governments of any discontinuance, reduction, or impairment of service in their state.").

[24] *See Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) at note 197 ("Throughout this document, 'Tribal lands' include any federally recognized Indian tribe's reservation, pueblo or colony, including… Alaska Native regions established pursuant to the Alaska Native Claims Settlements Act 85Stat. 688)…").

least annually.[25] Many of the ARC's member companies are cooperatives, and many have a majority of their Board of Directors, ownership, and employees who are Tribal members.[26] The ARC supports measures that will increase communication and interaction between carriers and the Tribal governments they serve, but carriers must be allowed some flexibility in giving notice to Tribal governments. A one-size-fits-all approach will not adequately address the problem.

V. Conclusion.

The Commission must continue to encourage carriers serving rural and remote areas of the nation to upgrade their networks so that everyone can take advantage of modern broadband. The ARC believes the Commission needs to recognize that small, rural carriers face additional obstacles that larger carriers do not, and therefore should be exempt from some of the more onerous reporting and notice requirements. The Commission must continue to search for the appropriate balance between supporting existing network services and encouraging the transition to IP-based networks.

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[25] *See Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) at para. 604 ("ETCs serving Tribal lands must include in their reports documents or information demonstrating that they have meaningfully engaged Tribal governments in their supported areas.").

[26] *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket Nos. 11-42, 09-197, 10-90, Reply Comments of the Alaska Rural Coalition, before the FCC (Sep. 30, 2015) at 14 ("All of Alaska is designated as Tribal lands. GCI noted that Alaska has 'the highest percentage of Native population of any state.' There are multiple ARC member companies that have a majority of their Board, ownership, and employees who are Tribal members.").

Respectfully submitted on this 24th day, November, 2015.

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