

Technology Transition FNPRM

February 10, 2016



The Proposal¹ Inappropriately Expands the 214 Process

The Proposal expands the section 214 process well-beyond its purpose of ensuring communities are not cut-off altogether from communications service.

- The Commission has historically used five factors in considering a 214 discontinuance.² The Proposal improperly expands one of those factors, the “adequate substitute” factor, such that it would trump the factors that balance the interests of the carrier and the user community.
- The Act simply requires the Commission to determine whether a proposed discontinuance of service will adversely affect the “public convenience and necessity.”

¹ FNPRM Establishing Clear Standards to Streamline Transitions to an All-IP Environment, FCC 15-97, Rel. August 6, 2015

² See ¶54, FCC 93-165. Rel. March 29, 1993, “These factors include: (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services.”



Wide Adoption of Alternative Services is Proof of Their Adequacy

The fact that so many consumers have made the switch to IP and Wireless Alternatives, establishes that these services not only are “adequate” substitutes for traditional TDM services but also that the vast majority of consumers prefer them.

- Taking the Proposal to an extreme, an ILEC could lose 100% of its subscribers to alternative services and not be permitted to withdraw service.
- The Commission should not adopt a framework that requires new technologies to emulate older technologies, particularly a technology that the Commission no longer supports and the majority of the U.S. no longer subscribes.³
- Adoption of an as-good-or-better-than-legacy standard is also inconsistent with section 214. The standard for substitute services is that it need only be adequate.⁴

³ See FCC 15-97 para 229 “We tentatively conclude that . . . any replacement offered by the requesting carrier . . . permit similar service functionalities [calling card, dial around, collect or third-party number billed calls] as the service for which the carrier seeks discontinuance authority.”

⁴ Id 216 “We therefore tentatively conclude that any adequate substitute test that we adopt should evaluate whether the replacement or alternative service will (a) afford the *same or greater capacity* as the existing service and (b) afford the same reliability as the existing service . . .”[emphasis added]



The Proposal Will Impede and Delay the IP Transition

The Proposal will impose significant costs and delays on ILECs as they complete the transition from TDM to IP, hindering their incentive and ability to expand deployment of broadband networks and services.

- The criteria would impose on ILECs a Hobson's choice – redesign IP service to incorporate features and functions that the Commission, *not consumers*, believes are appropriate, or continue to maintain their TDM networks and services in perpetuity.
- Wireless must be part of the U.S. rural broadband solution, but that investment will be constrained by a requirement on ILECs to continue funding the TDM network supporting legacy services.

The Commission should expect that the Proposal will lead to disputes whether the substitute service(s) meet the criteria and will engender delays in the 214 process.

This will produce the exact opposite result from the Commission's stated goals for the Proposal: to provide clarity and speed to the IP transition.⁵

⁵ Id. ¶ 202 "The Commission remains dedicated to providing carriers the guidance and clarity they need to implement new technologies at scale as quickly as possible."



The Rulemaking Process is Better Suited to Address Service Criteria

Rules of general applicability are superior to piecemeal evaluation of section 214 applications that will affect only one segment of the market.

To the extent that there is a customer benefit from the application of a proposed criterion a rulemaking would:

- Extend that benefit to all consumers, whereas the Proposal would apply to few, possibly one of, the alternative services to which subscribers have moved;
- Promote competition, whereas the Proposal would apply two vastly different sets of service requirements on competing providers;
- Provide the Commission a framework to balance consumer and carrier interests, whereas the Proposal's framework is entirely one-sided.