

June 6, 2016

Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Technology Transitions, GN Docket No. 13-5; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition; GN Docket No. 12-353; Lifeline Link Up Reform and Modernization, WC Docket Nos. 11-42, 10-90, and 09-197.

Dear Ms. Dortch:

On June 1, 2016, Harold Feld, Dallas Harris, and Kayla Gardner of Public Knowledge met with Megan Capasso, Brian Hurley, Matt DelNero, Carol Matthey, Daniel Kahn, Peter Saharko, Heather Hendrickson, Michele Berlove, Gail Krutov, Taliesin Gabriel, and Bradley Bourne of the Wireline Competition Bureau, with regard to the above captioned proceedings.

Tech Transition (Docket Nos. 13-05, 12-353)

Responding to the most recent filing by AT&T, Public Knowledge (PK) agreed that services with no customer demand should continue to be addressed using the existing procedures. With regard to discontinuances an entire TDM-based systems as part of the tech transition, however, it is premature to discuss streamlining. Although PK anticipates tht streamlining will be appropriate after the Commission, carriers and local communities gain experience, that will take some time. The current streamlined fast track rules were set in place only after many years of processing routine discontinuances. By contrast, the initial applications for the Tech Transition will require substantial review, and cannot be considered so routine as to warrant a fast-track approach or presumption of approval.

PK also argued that the Commission must establish criteria for measuring network reliability and cybersecurity independent of 9-1-1. The traditional phone network is the primary “tent pole” of the numerous communications networks that, together, make up the wireless and wireline communications system for the United States. All these networks, whether IP based or not, depend on the stability and reliability of the PSTN. Without some metric to ensure that the system will remain secure and reliable post-transition, the entire communications network for the United States becomes vulnerable.

PK urged the Commission to begin to consider measures to promote the transition once the basic framework is in place. As reflected in the reports on the AT&T pilot programs, the difficulty in coordinating local government, state government, local businesses and the local population present huge problems for the ILEC seeking to upgrade its facilities as part of the Tech Transition. The Commission should consider how best to educate local governments and local communities, as well as how to assist ILECs in sharing information to ensure as smooth a transition as possible.

For example, the Commission should consider how to encourage ILECs to adopt schedules that will give localities sufficient time to develop transition plans that work with state and local budgeting cycles, while respecting the need to protect sensitive business information. The Commission should begin to consider whether adoption of a deadline for phase out of TDM-based systems, whether as voluntary targets or as a mandatory transition date, will be necessary to produce the needed “deadline pressure” to focus state and local efforts. In conjunction with such a proceeding, the Commission should also consider whether USF funds should be explicitly targeted, either through the high cost fund or through a link-up program, to facilitate transition of legacy equipment owned by state or local governments, small businesses, or consumers.

In short, for the transition to succeed, this proceeding cannot be the end of the matter. The ILECs will face significant burdens in transitioning the telephone system to what America requires for the digital age. Unlike previous transitions, ILECs cannot simply incorporate the cost of transition into their tariffed rates. All elements of government must work together to ensure that the transition is affordable and an upgrade for all Americans. While this certainly includes maintaining safeguards to ensure that consumers are adequately protected, it must also recognize that an undertaking of this scope cannot be the responsibility of a single company, or even solely the responsibility of the private sector.

CTIA Petition for Partial Reconsideration (Docket Nos. 11-42, 10-90 and 09-197)

On August 13, 2015, CTIA filed a Petition for Reconsideration¹ from the Commission’s *Lifeline Order on Reconsideration*.² With regard to the *Petition*, Public Knowledge stated the following.

First, to the extent CTIA’s *Petition* addressed obligations to protect information held and maintained as part of the Commission’s rules on verification of eligibility, the CTIA *Petition* is now moot. The Commission’s most recent *Lifeline Order* created a third-party verification scheme, eliminating the need for carriers participating in Lifeline to hold and store in electronic form the information needed to verify eligibility.

To the extent CTIA’s *Petition* addresses the general admonition in the 2015 *Lifeline Order on Reconsideration* to carriers to protect CPNI, it is an untimely request for reconsideration of the Commission’s 2007 *CPNI Order*.³ There, the Commission explicitly stated that carriers would be responsible to protect the confidential information collected from customers, including

¹ Petition for Partial Reconsideration by CTIA, WC Docket No. 11-42 et al. (filed Aug. 13, 2015).

² *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818 (2015).

³ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, 22 FCC Rcd 6927 (2007).

personally identifiable information (PII) such as social security numbers.⁴ The *2007 CPNI Order* explicitly declined to adopt a safe harbor provision, warning carriers that they must take precautions that “are reasonable in light of the threat posed by pretexting and the sensitivity of the customer information at issue.”⁵ The Commission further admonished carriers that they had a responsibility to adopt more than the minimum standards set forth in the *2007 Order*, but to continue to upgrade their security practices in light of new information and the evolution of best practices.⁶

The mere fact that the Commission reminded carriers of their pre-existing duties under the *2007 CPNI Order*, including the requirement to implement the commitments made as part of the record in the *2015 Order On Reconsideration*, did not substantively “reopen” the Commission’s previous decision so as to give rise to another opportunity for CTIA to challenge this aspect of the Commission’s rules. CTIA (and other carriers) chose not to challenge this aspect of the Commission’s Order in 2007.⁷ They cannot use the Commission’s 2015 reminder to bootstrap their way to an untimely challenge.

Indeed, it is important to note that CTIA’s further allegation in its *Petition for Reconsideration* that the Commission has used Notices of Apparent Liability (NALs) to create precedent is equally stale and therefore erroneous. The *2007 CPNI Order* unambiguously and clearly stated: “we hereby *put carriers on notice* that the Commission henceforth will infer from evidence that a pretexter has obtained unauthorized access to a customer’s CPNI that the carrier did not sufficiently protect that customer’s CPNI.”

Having “put carriers on notice” in 2007, CTIA cannot claim, on behalf of its members, that the Commission acted without warning when it issued NALs against carriers who failed to secure the confidential information – including PPI. Indeed, the Commission did not have to “infer” that the carriers in question had failed to adequately secure the information. The record clearly established that the carriers in question had failed to take even the basic minimum standards set forth in the *2007 CPNI Order*.

Accordingly, the Commission should dismiss CTIA’s *Petition for Reconsideration*.

⁴ *Id.* at 6928 n.2

⁵ *Id.* at 6959.

⁶ *Id.* at 6959-60.

⁷ See *NCTA v. FCC*, 567 F.3d 659 (D.C. Cir. 2009).

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In accordance with Section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed in the above-referenced dockets. Please contact me with any questions regarding this filing.

Sincerely,

/s/ Harold Feld
Senior V.P.
Public Knowledge

Cc: Matt DelNero
Megan Capasso
Brian Hurley
Carol Matthey
Daniel Kahn
Peter Saharko
Heather Hendrickson
Michele Berlove
Gail Krutov
Taliesin Gabriel
Bradley Bourne