August 19, 2013

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

Re: GN Docket No. 12-353, Comment Sought on the Technological Transition of the Nation's Communications Infrastructure; GN Docket No. 13-5, Technology Transitions Policy Task Force; WC Docket No. 13-149, Application Of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services; WC Docket No. 13-150, Application Of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services
Notice of *Ex Parte* Meeting

Dear Ms. Dortch:

On August 15, 2013, Harold Feld, Senior Vice President, and Jodie Griffin, Senior Staff Attorney, of Public Knowledge (PK) met with Louis Peraertz from Chairwoman Clyburn's office and the following members of the FCC's Technology Transitions Task Force: Henning Schulzrinne, Chief Technology Officer; Steve Wildman, Chief Economist; Sean Lev and Stephanie Weiner from the Office of the General Counsel; Lisa Gelb, Daniel Ball, William Dever, Albert Lewis, and Rodney McDonald from the Wireline Competition Bureau; Julius Knapp and Padma Krishnaswamy from the Office of Engineering and Technology; Jerome Stanshine from the Public Safety and Homeland Security Bureau; and Patrick Halley from the Office of Legislative Affairs.

Verizon's § 214(a) Applications for Fire Island, NY and Mantoloking, NJ and Post-Natural Disaster Guidance

Public Knowledge (PK) praised the Public Notice taking Verizon's § 214(a) applications to discontinue service in Fire Island, NY and Mantoloking, NJ out of the streamlined treatment that would have automatically approved the applications on August 27th.[1] The data request properly solicits information on Voice Link's reliability, quality, and ability to support services like alarm systems and fax machines.

[1] *See Section 63.71 Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services*, WC Docket No. 13-149, Public Notice (August 14, 2013); *Section 63.71 Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services*, WC Docket No. 13-150, Public Notice (August 14, 2013).

PK noted that Verizon's Voice Link deployment was a new, unexpected situation that raises novel legal and policy questions, and Verizon's § 214(a) applications are not ideal vehicles for deciding those broader issues. As hurricanes and other natural disasters continue to damage infrastructure at a point when carriers may prefer not to rebuild their copper networks, it seems likely that carriers will increasingly choose to rebuild their infrastructure with fixed wireless or VoIP service. Unless the FCC specifically creates a separate proceeding to decide the broader issues raised here, parties can be expected to treat the FCC's decision for Verizon's Voice Link applications as precedent for post-disaster network changes in the future. This would raise the stakes of Verizon's § 214(a) applications here enormously, and the entire Voice Link narrative for Fire Island and Mantoloking could become the template for network changes across the country, rather than a data point that informs the template the FCC would ultimately create in a broader post-disaster guidance proceeding.

This is why PK has urged the FCC to limit its decision for Verizon's Voice Link applications to their facts and comprehensively address the broader issues in a proceeding to provide guidance to consumers and carriers on post-natural disaster network changes.[2] As the events surrounding Fire Island and the New Jersey Barrier Islands show, there is much confusion over the process by which a carrier notifies the FCC and customers of its intent to replace its previous network with an alternative, and what the carrier must demonstrate to show that the replacement satisfies the requirement of § 214(a) that discontinuance of the old network does not impair service to the community and is not otherwise contrary to the public convenience and necessity.

As a preliminary matter, the FCC should use its authority in a separate proceeding to clarify for all that carriers must file a § 214(a) application when they wish to change their network infrastructure after a natural disaster has damaged their networks. For example, in its comments on Verizon's § 214(a) application, AT&T attempts to cast doubt on the idea that a carrier should be obligated to file a § 214(a) application to implement post-disaster network changes.[3] It is difficult to believe the FCC would have even needed to respond to the idea that policies ensuring reliable and functioning communications networks should apply *less* to hurricane victims, but the FCC should nevertheless clarify for all that carriers do indeed need to follow the rules for implementing network changes, even when those changes are motivated by storm damage to the network. It must be clear to carriers that there will be no self-help when it comes to the recovery process for natural disaster victims.

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[2] *See* Letter from Jodie Griffin, Public Knowledge, to Marlene H. Dortch, FCC, GN Docket No. 12-353, GN Docket No. 13-5, WC Docket No. 13-149, WC Docket No. 13-150 (June 12, 2013).

[3] Comments of AT&T Services, Inc., *Section 63.71 Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services*, WC Docket No. 13-150, *Technology Transitions Policy Task Force Seeks Comment on Potential Trials*, GN Docket No. 13-5, at 3 (July 29, 2013).

In its inquiry or rulemaking, the Commission should also decide the basic—but critical—issues of process. The Commission should establish when a carrier may proceed under Special Temporary Authority and when the carrier must file a § 214(a) request to permanently discontinue or alter service. PK noted that, at the latest, a carrier should be required to file § 214(a) requests when it files state tariff amendments to reflect the changes in its service, or when it has made the decision to permanently change the network instead of rebuilding what existed before the network was damaged.[4]

On issues of process and timing, the FCC should also respect and work in concert with state processes. For Voice Link, for example, the New York State Public Service Commission has been following a clear path to gather detailed information from the public and from Verizon before it makes a final determination on the adequacy of Voice Link. This type of process is important to informing the public discourse on the new service, and the Commission should ensure it continues to work with state agencies as it considers the § 214(a) applications.

The Commission should also establish that it will continue to treat the carrier's replacement service as a Title II telecommunications service, at least until the Commission has resolved the complex issues raised by the phone network transition. The Commission cannot let natural disasters become opportunities for carriers to shortcut the deliberations currently underway to comprehensively consider how best to handle the phone network's transition to IP-based technologies. Otherwise, basic features of the phone network like a user's ability to choose her long distance provider or attach her own device, or long-established expectations around reliability and public safety access could fall by the wayside without so much as a public debate on the issue.

The Commission could also use a separate proceeding to develop more thorough metrics on the appropriate quality of service standards for new services. Particularly with the current proliferation of states without carrier of last resort requirements, the FCC is the only backstop protecting voice quality for some consumers. This affects a broad swath of our communities, from businesses that depend on high quality of service to maintain their own professional customer service, to people with hearing problems that do not rise to the level of needing a relay service. Issues like quality of service, frequency of dropped calls, and 9-1-1 access will arise for all communities, regardless of their location or economic demographics. The Commission should therefore actively solicit comment on the appropriate standard for impairment of service under § 214(a).

[4] This requirement becomes more complicated if the disaster occurs in a state without any carrier of last resort requirements. This is exactly why the Commission should solicit public comments and invite further thinking on what triggering events should require carriers to file § 214(a) requests. After all, it may not always be clear exactly when the decision is made to permanently discontinue service. Without sufficient guidance from the Commission, this could lead to delays in notice and public process.

Above all, as PK has stressed before, the transition must not be a step backward. Consumers should not be worse off post-transition. There are important elements of TDM- and copper-based service whose loss would be a significant step backward for consumers (including calling card and collect call capabilities, among others). Carriers should show how they will continue to support those features, or the Commission should determine how to transition customers without leaving users behind during the throes of disaster recovery.

Finally, PK noted that in past proceedings parties have been confronted with unnecessary burdens due to the over-classification of confidential data.[5] Especially if Verizon's § 214(a) applications here could become the vehicle for deciding broader policy issues crucial to the phone network transition, Commission staff must vigorously guard against over-protection of data that should be publicly available. There are real costs to confidential treatment, affecting both the internal and external deliberations and discussions of members of the public, consumer advocacy groups, and competitors to the parties in a particular proceeding. Those costs are balanced by the benefits of protecting information that actually qualifies for confidential treatment, but the FCC must ensure that information that should be public is not swept under the shroud of confidentiality and kept from informing the public debate.

In particular, data relating to dropped calls, voice quality, and other technical issues should be public. The most basic question as to whether discontinuance of copper-based TDM service "impairs" service to the local community relies on the quality of basic dial tone service provided by Voice Link. If this proceeding will set the standard for wireline-to-wireless substitution, it requires broad input on this most technical question.

The FCC's Proposed Phone Network Transition Pilot Programs

Public Knowledge expressed its disappointment with AT&T's response to the Commission request for comments on specific phone network transition pilot programs.[6] Public Knowledge supports well-constructed pilot programs that are designed to collect specific data that informs—instead of setting—public policy, and include mechanisms to protect consumers. PK therefore cannot support the approach urged by AT&T as a serious proposal when it would leave behind consumer protections, make the pilot programs both mandatory and permanent, and require the FCC to forbear from enforcing basic rules that have successfully served out network for decades. The pilot programs cannot be a blank check to carriers at the expense of consumers, and they cannot simply be a glide path to deregulation. PK therefore urged the FCC to only implement serious, deliberately designed trials that protect consumers while gathering meaningful information to inform the transition process.

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[5] *See Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC for Consent to Assign AWS-1 Licenses*, WT Docket No. 12-4, Order (Aug. 21, 2012); Letter from John Bergmayer, Public Knowledge, to Marlene Dortch, FCC, WT Docket No. 12-4 (Jan. 12, 2012).

[6] *See* Comments of AT&T, *Technology Transitions Policy Task Force Public Notice Regarding Potential Trials*, GN Docket No. 13-5, at 10-15 (July 8, 2013).

In particular, PK stressed that any trial or pilot program using actual consumers must have adequate safeguards, including a clearly defined mechanism for halting the trial in the event vital services are degraded.

PK noted that any behavioral information gathered during a trial on IP-to-IP interconnection would necessarily be of limited utility. It is all too easy for a carrier to temporarily behave well while a regulator looks over its shoulder if the carrier may receive items from its own deregulatory wish-list in return. To the extent the FCC does allow negotiation of interconnection outside existing regulatory safeguards, the interconnection agreements in the trials must be available for the public to review and comment on if those agreements are to be the template for negotiations going forward.

Finally, if the Commission decides to implement a trial involving an all-IP wire center, PK emphasized the importance of timing. A comprehensive trial would involve many moving parts and present significant risks to consumers, and so this type of pilot program may be more appropriate when we are closer to the actual "phase-in" stage of the transition than right now, when we are still relatively early in the process. This way, the Commission could gather what unique information is offered by an all-IP wire center trial while using the data gathered from earlier, more narrow trials to design and more effective and consumer-friendly trial.

In accordance with Section 1.1206(b) of the Commission's rules, this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020.

Respectfully submitted,

/s/ Jodie Griffin
Senior Staff Attorney
PUBLIC KNOWLEDGE