

January 21, 2014

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. 13-150, Application Of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services

Dear Ms. Dortch:

On January 20, 2014, I spoke with Jonathan Sallet, Acting General Counsel, and Stephanie Weiner, Associate General Counsel, with regard to the above captioned proceeding. I had a substantially identical conversation with Rebekah Goodheart, Wireline Advisor to Commissioner Clyburn, on January 21, 2014.

I explained that the “common carrier prohibition” delineated by the D.C. Circuit last week in *Verizon v. FCC* raises significant concerns with regard to the pending matters in the PSTN transition. Specifically, with regard to Verizon's pending request to discontinue service on the New Jersey Barrier Island, the decision raises significant concern because grant of the request, without finding Voice Link to be a Title II service, would leave residents of Mantoloking without a guarantee of basic voice service. Accordingly, discontinuance of TDM service cannot serve the public interest.

Verizon in its 214(a) request points to the availability of Comcast as an alternative provider of wireline voice service. However, because Comcast is a provider of Title I service, Comcast cannot be required to serve the public indiscriminately. Comcast can refuse to provide voice service to any new home constructed in the community that does not wish to take Comcast's video or broadband service. Comcast may discontinue basic voice service in the event a customer discontinues Comcast video service. Finally, Comcast may terminate a customer's basic voice service if Comcast chooses to terminate video or data service for any reason, such as a violation of Comcast's broadband Acceptable Use Policy by using too many bandwidth intensive services.¹

A consumer that Comcast refused to serve could use a Title II CMRS service, but Title II CMRS services do not necessarily reach every home. Even where service is technically available, connections may be unreliable. CMRS providers are generally only required to provide

¹ See Mike Masnick, “Guy Kicked Off Comcast For Using Too Many Cloud Services,” Techdirt, July 14, 2011. Available at: <http://www.techdirt.com/articles/20110714/03594115087/guy-kicked-off-comcast-using-too-many-cloud-services.shtml>

“substantial service” within the geographic area of their license, and do not need to provide service to every residence.

Even if Verizon were willing to voluntarily accept an obligation to provide Voice Link to all residents on terms similar to those offered for their wireline service, the ability to enforce such a condition is questionable. As the Court explained in *Verizon v. FCC*, the Commission may not impose on a Title I service provider a Title II common carriage obligation. Once Verizon is released from its obligation to offer Title II service through grant of its pending 214(a), and absent classification of Voice Link as a Title II service, it is difficult to see how enforcement of a core common carrier obligation (obligation to serve the public indiscriminately) could be enforced.

With regard to the other proceedings, I noted that the Commission would appear to lack authority to resolve issues such as interconnection, intercarrier compensation, rural call completion or other areas touching on “core” common carrier obligations. At best, the FCC can impose a duty to negotiate in good faith, similar to that imposed for data roaming. I referred to our blog post on the Public Knowledge website, “The Net Neutrality Decision and the IP Transition. What Happens When You Can’t Make Phone Service Work Like A Phone Service?”²

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/ Harold Feld
Senior Vice President
PUBLIC KNOWLEDGE

cc: Jonathan Sallet
Stephanie Weiner
Rebekah Goodheart

² Available at <http://www.publicknowledge.org/blog/net-neutrality-decision-and-ip-transition-wha>