

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of)	
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)	
Technology Transitions)	GN Docket No. 13-5
)	
)	
Verizon New York Short-Term Network Changes (Belle Harbor, New York; Ocean View, Virginia; Lynnfield, Massachusetts; Farmingdale, New Jersey; Hummelstown, Pennsylvania))	Report Nos. NCD-2351, 2353; NCD-2352, 2354; NCD-2363, 2365; , NCD-2370; 2372; NCD-2371, 2373
)	
AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition)	GN Docket No. 12-353
)	
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Note: This document is also being filed in Docket Nos. WC 10-188, GN 09-51 and RM-11358, and is being submitted as a comment to the FCC blog.

**RENEWED AND REVISED MOTION
OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
FOR STAY AND TO SUSPEND 47 CFR § 51.3333**

The National Association of State Utility Consumer Advocates (“NASUCA”)¹ again moves the Federal Communications Commission (“FCC” or “Commission”) to stay action on change notifications that retire switches and/or retire copper in an entire wire center and NASUCA also, pursuant to 47 CFR 1.3, moves to suspend 47 CFR § 51.333(b) to the extent necessary, for good cause shown. The suspension should apply to the above-captioned Verizon change notifications. As stated in NASUCA’s May 9, 2014 Motion for Stay, et al., the FCC should suspend such filings; the rule should be also be suspended, until the latest of the following:

- Issuance of Report and Order in WC Docket No. 10-188 (copper retirement rules),
- Completion of IP Trials (GN Docket No. 13-5), or
- Completion of the investigation requested by Public Knowledge, et al. regarding forcing customers off copper-based service.²

Proceedings that apply to an entire wire center, whether initiated by Verizon or any other local exchange carrier (“LEC”),³ risk application of an automatic mechanism⁴ that will preempt the Commission’s present judgment on the Internet transition. Unlike AT&T, which is proceeding on the invitation of the Commission to do trials for the transition,⁵ Verizon (along with other LECs) is simply implementing a transition in its territory, picking off wire center by

¹ NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

² See GN Docket No. 12-353, et al., ex parte filing (May 12, 2014). NASUCA and four of its members signed on to the ex parte.

³ See 47 U.S.C. § 251(b), (c).

⁴ 47 C.F.R. § 51.333(A).

⁵ Not that AT&T’s proposed trials are without flaws (see NASUCA’s March 31, 2014 and April 10, 2014 comments in 13-353 and 12-35; see also, in 1428, et al., NASUCA ex parte on AT&T Trials progress report, submitted June 30, 2014), even though AT&T itself proposed the idea to the FCC.

wire center, using this mechanical process, according to its business plan. The process may have been appropriate in the past, but now **in the midst of the transition** the FCC's steps must be measured, and cannot, as NASUCA has warned, allow any company's business plan to dictate the public interest, or to define the reach of the enduring values of the Communications Act.⁶ Thus the Commission must put such applications on hold, pending determination of the basic principles for the transition.⁷

Verizon says that its abandonment of fiber does not put public safety at risk, and that POTS customers can keep their POTS with no degradation of service.⁸ Yet the FCC Staff has identified a number of public interest issues that are inherent in the AT&T transition trials.⁹ The Commission, not Verizon, should determine whether those issues are addressed in Verizon's network changes.

The Commission's network change rule, 47 CFR § 51.333(B), provides a process for automatic filings. Suspension of the rule, especially §§ (B)(2), and (C)-(F), is appropriate at this time, in order to consider the implications of Verizon's plans. The rule was set and previous filings were made well prior to the current transitional environment.

Among the issues that the Commission needs to examine is unbundling. As noted in NASUCA's earlier motion,

Verizon is proposing to provide service over fiber when it retires copper facilities. In 2003, the Commission declined to require unbundling of fiber facilities under 47 USC § 251(c)(3), because it did not find impairment as required by §

⁶ See FCC 14-5, ¶ 9.

⁷ AT&T did not object to the Commission's condition that the trials be reversible, i.e., that consumers could be restored to the *status quo ante* at the end of the trial.

⁸ Verizon June 2, 2014 ex parte in GN 13-5 at 2.

⁹ See <http://www.fcc.gov/document/technology-transitions-update-june-13-2014-fcc-open-meeting>; see also <http://www.telecompetitor.com/tt-wants-to-replace-dsl-with-wireless-ip-tdm-to-ip-transition-trials/>.

251(d)(2).¹⁰ In the absence of the copper facilities, there will of necessity be impairment for competitors. Thus where Verizon retires the copper, fiber must be unbundled, at TELRIC rates.¹¹

Again, the Public Notices mention objections to the network change only from information service providers and telecommunications service providers,¹² as if end-use consumers might not have objections to changes with these implications. The Telecom Act contains no such limitations.¹³ As previously noted by NASUCA, the recent blog entry by the Chief of the Wireline Competition Bureau stated that the FCC “want[s] to hear from every kind of customer—residential, small or large business, wholesale, and those served by wholesale customers—about the potential benefits and/or harms that could come from the retirement of these copper facilities.”¹⁴ The FCC should open this process up, and slow it down, by suspending 47 CFR 51.333 as it applies to wire-center copper-retirement and switch removal applications.¹⁵ Good cause has been shown to suspend 47 CFR 51.333.

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¹⁰ See

¹¹ NASUCA May 20, 2014 Motions at 3, citing *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17145, para. 278 (2003) (Triennial Review Order), corrected by Errata, 18 FCC Rcd 19020 (2003) (Triennial Review Order Errata), vacated and remanded in part, affirmed in part, *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (USTA II).

¹² See 47 CFR § 51.333(c).

¹³ 47 USC § 214(a)-(d).

¹⁴ <http://www.fcc.gov/blog/protecting-consumers-transition-copper-networks>.

¹⁵ Contrary to the impression put forth by Verizon, the process followed through its network notifications has not been deliberative. See Verizon ex parte (June 2, 2014) at 6.

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